Government
Publications

SESSIONAL PAPERS.

VOLUME XIV.—PART VII.

THIRD SESSION OF THE FOURTH LEGISLATURE

OF THE

PROVINCE OF ONTARIO.

Session 1882.

LIBRARY
JUL 1 1966
UNIVERSITY OF TORONTO

1091321

TORONTO:
PRINTED BY C. B. ROBINSON,
JORDAN STREET.

LIST OF SESSIONAL PAPERS.

VOL. 14, SESSION 1882.

ARRANGED ALPHABETICALLY.

——	No.	——	No.
Acts Unconstitutional	58	Judicature Act	27
Agriculture	3	Legislative Resolutions	24
Agricultural Statistics	30	Library	12
Appointments to Office	48, 59	License Act	60
Asylums	8	May, J. P.	55
Beer and Wine Licenses	61	Members Appointed to Office	48
Births, Marriages, and Deaths	9	Mercer Estate	51
Bonds and Securities of Office	10	Municipalities	44, 63
Boilers, Inspection of	47	Nation River	56
Boundaries of Ontario	23, 24, 69	Parliament Buildings	40, 41, 54
Butchers' Meat	49	Provincial Secretary	67
Central Prison	46	Public Accounts	1
Coal	68	Public Works	7
Coroners' Inquests	66	Registrars	14
County Crown Attorneys	33	Severn River	57
County Court Judges	29	Sheep and Dogs	64
Crown Lands	4	Shelburne Licenses	62
Division Courts	35, 38, 39, 65	Sheriffs' Fees	34, 37
Education	5	Simcoe Licenses	52
Elections	22	Statutes of Ontario	15
Estimates	2	Stipendiary Magistrates	53
Felonies	36	Superannuated Teachers	50
Financial Matters, Quebec and Ontario	25	Tavern and Shop Licenses	11
Hospitals and Charities	45	Toll Roads	42
Huron and Ontario Canal	16, 32	University of Toronto	17, 19, 20
Immigration	6	Upper Canada College	18, 43
Insurances	21, 31	Wheat Experiments	26
		York County Court Judge	28

SESSIONAL PAPERS.

ARRANGED NUMERICALLY.

CONTENTS OF PART I.

No. 1.. Public Accounts for the year ending 31st December, 1881.

No. 2.. Estimates for the year 1882.

CONTENTS OF PART II.

No. 3.. Report of the Commissioner of Agriculture and Arts for the year 1881.

CONTENTS OF PART III.

No. 4.. Report of the Commissioner of Crown Lands for the year 1881.

No. 5.. Report upon Public Schools, High Schools, Normal and Model Schools, for the years 1880-1.

No. 6.. Report of the Immigration Department for the year 1881.

No. 7.. Report of Commissioner of Public Works for the year 1881.

CONTENTS OF PART IV.

No. 8.. Report upon the Asylums, Prisons and Public Charities for the year 1881.

CONTENTS OF PART V.

No. 9.. Report of the Registrar-General for the year 1880.

No. 10.. Detailed Statement of all Bonds and Securities recorded in the Provincial Registrar's Office since the last Return submitted to the Legislative Assembly.

No. 11.. Report upon the working of the Tavern and Shop Licenses Act for the year 1881.

No. 12.. Report from Librarian respecting the Legislative Library.

No. 13.. *(Blank.)*

No. 14.. Return of all Fees and Emoluments received by the Registrars of Ontario for the year 1881.

No. 15.. Return from the Queen's Printer, relating to the disposal of the Ontario Statutes for 1881. *(Not printed.)*

No. 16.. Return of copies of all papers, petitions and correspondence addressed to the Government by the Huron and Ontario Ship Canal Company, or by other parties, relating to the construction of a Ship Canal to connect the waters of the Georgian Bay with those of Lake Ontario. (*Not printed.*)

No. 17.. The Bursar's Statements of cash transactions of the University of Toronto and University College for the year ended 30th June, 1881.

No. 18.. The Bursar's Statement of Receipts and Disbursements of Upper Canada College for the year ended 30th June, 1881.

No. 19.. Return of all correspondence between the Council of University College and any Female applicant for permission to attend lectures in that Institution, such Return to also shew the standing of such applicant in the University of Toronto.

No. 20.. Return shewing what applications have been made by Females for admission to any of the lectures of University College for the Session of 1881-82, and the results of such applications, together with copies of all correspondence in connection therewith.

No. 21.. Report of the Inspector of Insurance, with Appendices, for the year 1881.

CONTENTS OF PART VI.

No. 22.. Return from the Records of the Elections to the Legislative Assembly, since the last Return in 1880, shewing the aggregate number of Votes polled for each Candidate in each Electoral District in which there has been a contest, the total number polled in each Division, and the number of names on the Voters' Lists of the same respectively, the number of Voters remaining unpolled, and the population of each Constituency, as shewn by the last Census.

No. 23.. Correspondence and Papers respecting the Disputed Territory on the Northerly and Westerly sides of Ontario.

No. 24.. Correspondence with reference to Resolutions of the Legislative Assembly passed on 3rd March, 1881, respecting the Boundary Award.

No. 25.. Return of copies of all correspondence, subsequent to that already brought down, between the Government of Ontario, or any member thereof, and the Government of Canada, or the Government of Quebec, with reference to settlement of financial matters between the Provinces of Ontario and Quebec and the Dominion of Canada.

No. 26.. Return shewing the various kinds of Wheat experimented on at the Agricultural College, and the counties from which it came. (*Not printed.*)

No. 27.. Order in Council, and a Report of the Honourable Attorney-General respecting certain appointments and arrangements under the Judicature Act.

No. 28.. Order in Council granting an Allowance to the Junior Judge of York. (*Not printed.*)

No. 29.. Orders in Council commuting the Fees of certain County Court Judges. (*Not printed.*)

No. 30.. Report with regard to Agricultural Statistics.

No. 31.. Report of the Honourable the Attorney-General of Ontario with respect to certain proceedings before the Imperial Privy Council, involving the right of the Provincial Legislature to pass the Act to secure Uniform Conditions in Policies of Insurance.

No. 32.. Return of copies of all correspondence between the Government, or any Member or Department thereof, and the President of the Huron and Ontario Ship Canal Company, or any member of the said company, relating (1) to a re-survey of the proposed route of a canal connecting the waters of Lakes Huron and Ontario, and (2) to placing in the Estimates a sum sufficient to enable the said Company to keep the office open for another year. (*Not printed.*)

No. 33.. Return shewing the aggregate amount of fees and emoluments actually received by the several County Crown Attorneys in Ontario, during the years 1878, 1879 and 1880, as returned by them under the provisions of the Act 43 Vic., cap. 3. Also a similar Return by the several Clerks of the Peace in Ontario.

No. 34.. Return of the number of Bills in Chancery, and Writs of Summons issued out of the Superior and County Courts, served by the Sheriffs of Ontario in the years 1879 and 1880. (*Not printed.*)

No. 35.. Report of the Inspector of Division Courts for the year 1880.

No. 36.. Return in respect to cases under the Act for the more speedy trial of Felonies and Misdemeanors, from the several Counties of Ontario, for the year 1880, shewing in tabular form the following, viz.: 1. The number of Prisoners brought before the County Judge or Police Magistrate in the County. 2. The number of Prisoners consenting to be tried by the Police Magistrate or Judge without a Jury. 3. The nature of the offences tried by the Judge without a Jury, giving the number under each several class of offences. 4. The number of convictions in cases so tried by the Police Magistrate or Judge. 5. The number of Prisoners demanding a trial by Jury. 6. The nature of the offences in cases when Prisoners demanded to be tried by a Jury, giving the number of each. 7. The number of convictions before the Courts of General Sessions, in cases when the Prisoner demanded to be tried by a Jury. 8. The number of cases in which imprisonment for a term of upwards of one year has been imposed, the nature of the offences, and the terms of imprisonment. (*Not printed.*)

No. 37.. Statement of fees and emoluments earned and disbursements made by Sheriffs of the Province of Ontario for the year ended 31st December, 1881, in accordance with the provisions of 43 Vic. cap. 3, Statutes of Ontario.

No. 38.. Return of the suits over $100 brought in each Division Court in the Province, in the year 1880, verdict in each case, the cases in which the Attorneys' fees were allowed by the Judge to Plaintiff, and amount thereof; the cases in which Agents' fees were allowed by the Judge to Plaintiff, and amount thereof; the cases in which the Attorneys' fees were allowed to Defendant, and amount thereof; the cases in which Agents' fees were allowed to Defendant, and amount thereof. (*Not printed.*)

No. 39.. Return of the number of cases entered for trial in the several Division Courts in the Province from the 5th March to 31st December, 1880, giving for each County or City the number between $20 and $60, between $60 and $100, and between $100 and $200; the amount of Jury Fees paid

by Division Court Clerks to County or City Treasurers for suits so entered, and the amounts paid to Jurors in Division Courts for same period.

No. 40.. Return of all papers and documents, including the report of the experts, respecting competitive plans for new Parliament and Departmental Buildings for this Province; but not including amongst such papers and documents any that may be of a private or confidential character. (*Not printed.*)

No. 41.. Return of all moneys expended in preparation of plans, or otherwise, regarding new Parliamentary Buildings. (*Not printed.*)

No. 42.. Return shewing the number of Roads on which Tolls are collected in each County in the Province, the names of the Municipal Corporations, Joint Stock Companies, or individuals owning such Roads, the date of construction, the capital invested by present owners in construction or purchase, the length of Roads, rate per mile charged as Tolls, and the gross and net revenues during the years 1878, 1879 and 1880; also, the rate of dividends paid to the owners during those years.

No. 43.. Return in regard to Upper Canada College, shewing for each of the past four years:—1. The average number of Pupils in attendance. 2. The average age of Pupils in the first and second Forms. 3. The average number of Pupils in attendance from each City and County in Ontario, and also from elsewhere. 4. The Fees payable by Pupils. 5. Average cost per Pupil per annum. 6. The number of (*a*) First-class Honours; (*b*) Second-class Honours and Scholarships taken by Pupils of the College at the Matriculation Examinations of the University of Toronto. 7. Names, degrees or certificates, and salaries of the Masters at present employed in the College. 8. Names, duties and salaries of all other officials at present employed in the Institution. (*Not printed.*)

No. 44.. Return shewing:—1. The number of Members comprising each Municipal Council in the Province (but not including County Councils), in the years 1879 and 1880. 2. The number of Assessors in each such Municipality for each of the said years. 3. The amount of such compensation paid each such Assessor in each such year for the performance of his duties as Assessor. (*Not printed.*)

No. 45.. Return shewing the sums paid to each of the Hospitals and Charities in this Province in each year since Confederation, shewing the total sum paid to each separate institution, and the population of the locality in which such institutions are situated.

No. 46.. Return shewing (1) the number of Prisoners employed each month in the of foremen, guards, or instructors employed in the shop during that period, Central Prison Broom Factory, from January 1st, 1878, to January 1st, 1879; (2) the number and the wages paid to them; (3) nature of machinery used, whether steam or foot power; (4) cost of knives and needles used during that period; (5) number of brooms made in each month from January 1st, 1878, to January 1st, 1879, with average number made in dozens by each man *per diem;* (6) number of Prisoners employed each month in the Central Prison Broom Factory, from January 1st, 1879, to January 1st, 1882; (7) number of foremen, guards, or instructors employed in the shop during that period, and the wages paid to them; (8) cost of knives and needles used during that period; (9) nature of machinery used, whether steam or foot power; (10) number of brooms made in each month from January 1st, 1879, to January 1st, 1882, with average number made, in

dozens, by each man *per diem*; (11) also, copy of the contract made by the Government with Messieurs H. A. Nelson & Sons, of Toronto and Montreal; (12) copies of any correspondence relating to the contract since it was made, as to changes in same, or complaints as to non-fulfilment by either the Government or Messieurs H. A. Nelson & Sons; also, any complaints, if any, as to the quality of the brooms manufactured, and waste in manufacturing the same.

No. 47.. Return of correspondence with the Government of the Dominion respecting legislation to guard against casualties from Boiler Explosions.

No. 48.. Return shewing (1) what Members of this House, or persons who have been Members thereof within six months prior to their appointment to office, have been appointed to office under the Crown in this Province since Confederation. (2) The dates of the resignations of such Members of their seats in this House and of their appointment to office. (3) The nature of the offices to which such appointments have been made.

No. 49.. Return shewing the total quantity of Butchers' Meat supplied to each of the Public Institutions of the Province and the cost thereof for the years 1880 and 1881 respectively; also, the cost to the Province in each of the said years for the erecting of slaughter-houses and salaries of butchers and agents employed in purchasing cattle, etc., together with the amount of freight on such cattle, etc., from the place of purchase to the different institutions.

No. 50.. Return shewing the amount received in each year and the amount paid in each year on account of the Superannuation of Public School Teachers; also, shewing the total sum received and the total sum paid out on account of such fund.

No. 51.. Return shewing Receipts and Expenditures in detail since the date of the last Return connected with the estate of the late Andrew Mercer; shewing also, in a separate account, a detailed statement of the cost of the building known as the Andrew Mercer Reformatory (*Not printed.*)

No. 52.. Return shewing the number of Shop, Hotel, and Saloon Licenses granted in each Municipality of the Ridings of East and West Simcoe, dating from the 1st day of January, 1878, to the 1st day of January, 1882, stating the amount received for each license for each of the above years. (*Not printed.*)

No. 53.. Reports of the Stipendiary Magistrates with respect to the Northerly and Westerly parts of the Province of Ontario.

No. 54.. Return of copies of the specifications upon which the advertisements for the construction of new Parliament Buildings were based, and of the advertisement for tenders and forms of tenders. (*Not printed.*)

No. 55.. Copies of the Commission of Enquiry of the Minister of Education into certain charges against S. P. May, M.D., an officer of the Education Department, the Report of the Commissioner, the evidence and exhibits.

No. 56.. Return of all correspondence between the Government, or any Member of the Government, and any person or persons, referring to the deepening or draining the Nation River during the years 1874 to 1881 inclusive, not included in any Return heretofore brought down. (*Not Printed.*)

No. 57.. Return of copies of all correspondence between the Government, or any Member thereof, and any person or persons, referring to the widening or deepening of the channel of the Severn River at the outlet of Lake Couchiching, during the years 1874 to 1881 inclusive, and not included in any previous Return; together with a copy or copies of the Report of the Surveyor appointed by the Government to take the necessary levels around Lakes Simcoe and Couchiching with the above object.

No. 58.. Return giving a statement of all judicial decisions declaring Acts or parts of Acts of the Ontario Legislature unconstitutional; also, shewing the Judges or Courts by which such judgments have been given, the causes in which given, and the effect on such Acts or parts of Acts respectively; also, shewing which of such judgments, if any, have been appealed from, and the appeal remaining undecided; also, all such decisions affirming the constitutionality of enactments of this Legislature.

No. 59.. Return shewing the names of all persons Appointed to any Office, either temporary or permanent, by the Government since Confederation, with the names of service, religion, date of appointment, salary, date of removal if removed, and cause of such removal, so far as such information is not contained in any Return heretofore laid before this House.

No. 60.. Return shewing, for each License District, the number of times in which, under sections 62 and 63 respectively of the Liquor License Act, the powers of the County Judge have been invoked or exercised in the matter of (*a*) Revocation of Licenses improperly obtained, and (*c*) the investigation of negligence of Inspectors.

No. 61.. Return shewing the number of Beer and Wine Licenses which have been applied for; also the number which have been granted in each County in the Province under section 19, cap. 27, 44 Victoria.

No. 62.. Return shewing the number of convictions for violations of the License Act in the Village of Shelburne, and the amount of fines collected in each of the years 1879, 1880 and 1881. (*Not printed.*)

No 63.. Statement of the Assets, Liabilities, Revenue Expenditure, etc., of the Municipalities of the Province of Ontario. (*Not printed.*)

No. 64.. Return shewing the number of Sheep killed by Dogs, and the amounts paid for the same, in each of the Municipalities of the Province for the years 1879, 1880 and 1881 respectively. (*Not printed.*)

No. 65.. Return shewing (1) all Clerks of Division Courts appointed by the Government during the years 1880 and 1881, shewing in each case whether such appointments were to fill vacancies caused by deaths or resignation; (2) all Bailiffs of Division Courts appointed during the same period, specifying the causes of such appointment, giving residences and dates in all cases.

No. 66.. Return shewing the number of Coroners' Inquests on Deaths held in the Province in the years 1878, 1879, 1880 and 1881, with the total amounts paid for the same in each County, and the total amounts of such costs refunded by the Government to the Counties in each year.

No. 67.. Report of the Provincial Secretary for the year ending 31st December, 1881.

No. 68.. Return shewing the quantity of Coal purchased by or on account of the Province in each of the years from 1874 to 1881, both inclusive; the Institutions for which purchased; the date of purchase, and the price per ton paid, giving the information in each case in detail as to hard and soft Coal.

CONTENTS OF PART VII.

No. 69.. All the correspondence between the Governments of the Dominion and of this Province, and all the Orders in Council and documents, of dates from 1856 to 1882 inclusive, relating to the Northerly and Westerly Boundaries of this Province; also, all the Returns, Resolutions, etc., brought down or passed this Session relating to the said Boundaries.

CORRESPONDENCE, PAPERS AND DOCUMENTS,

OF

DATES FROM 1856 TO 1882 INCLUSIVE,

RELATING TO THE

NORTHERLY AND WESTERLY BOUNDARIES

OF THE

PROVINCE OF ONTARIO.

Printed by Order of the Legislative Assembly.

Toronto:
PRINTED BY C. BLACKETT ROBINSON, 5 JORDAN STREET.
1882.

Notes of explanation and reference have, under the supervision of the Attorney-General, been appended to a few of the Papers. These notes are in brackets, with the initials, "G.E.L."

CONTENTS.

PAGE.

1856. Dec. 4. The Secretary of State for the Colonies (hereinafter called the Colonial Secretary) to the Governor-General, touching the proposed renewal of the Hudson's Bay Company's license to trade, the reference of the question to a Committee of the House of Commons, and the course to be pursued in the interest of Canada thereon 1

1857. Jan. 17. Order in Council (Canada) upon the same subject, urging the importance of ascertaining the limits of Canada, and suggesting that her western boundary extends to the Pacific Ocean 2

" " The Governor-General to the Colonial Secretary, with copy thereof. 2

Feb. 16. Order in Council (Canada), setting forth the instructions to be given to the special Agent appointed to represent Canadian interests before the proposed Committee of the House of Commons 3

" 17. The Governor-General to the Colonial Secretary, with copy thereof. 4

" 20. The Assistant Provincial Secretary to Chief Justice Draper, conveying instructions to him as such special Agent. 4

April — Memorandum of the Hon. Joseph Cauchon, Commissioner of Crown Lands (Canada), respecting the Indian, North-West, and Hudson's Bay Territories, and the questions of boundary and jurisdiction connected therewith 6

(*a*) Operations of the Hudson's Bay Company 6

(*b*) Boundary of the Company's territories under their Charter 8

(*c*) Boundaries of Canada 21

(*d*) Boundaries of the Indian territories 25

(*e*) Jurisdiction 26

May 6. Chief Justice Draper to the Colonial Secretary, with memorandum, and suggesting a reference of the question of boundary to the Judicial Committee of the Privy Council 31

" " Memorandum of Chief Justice Draper (alluded to in the foregoing communication), respecting the question of boundary between Canada and the territory claimed by the Hudson's Bay Company, and the diverse views of the Company thereon in recent and in former times 32

PAGE.

1857. May 28. Further paper of Chief Justice Draper relative to the boundaries, detailing the various claims made by or on behalf of the Hudson's Bay Company, 1687-1750 (delivered to the House of Commons Committee) 37

June 8. Evidence of Mr. William McD. Dawson before a Committee of the Legislative Assembly, touching the Hudson's Bay Company's claims to territory, jurisdiction, and exclusive rights of trade.. 40

" 12. Chief Justice Draper to the Provincial Secretary, conveying his opinion that a decision by the Judicial Committee would give to Canada, for westerly limit, the meridian of the source of the Mississippi, and on the north a line considerably beyond the Height of Land 47

July 18. The Governor of the Hudson's Bay Company to the Colonial Secretary, consenting to a reference to the Judicial Committee as to the extent of their territory ; offering to cede to Canada such lands as may be required for settlement; and stating the Company's position generally 47

" 22. Instructions to Mr. Gladman, Chief Director of the party engaged, under authority of the Government of Canada, in the exploration of the country between Lake Superior and Red River.... 49

Memorandum shewing that the objects of the expedition had been attained and that the explorations were subsequently continued and extended under Messrs. Hind and S. J. Dawson 51

" " Final Report of Chief Justice Draper respecting his mission to England, giving a general review of his action and of proceedings 51

1858. Jan. 20. The Under-Secretary of State for the Colonies (hereinafter called the Under-Secretary) to the Governor of the Hudson's Bay Company, offering to renew the Hudson's Bay Company's license of exclusive trade, upon terms, and suggesting the desirability of ascertaining the boundary between Canada and the territories claimed by the Company, and the surrender of such portion thereof as may be available to Canada for purposes of settlement or for mining or fishing 60

" 21. The Governor of the Hudson's Bay Company to the Colonial Secretary, agreeing to these terms and suggestions 61

" 22. The Colonial Secretary to the Governor-General, transmitting the preceding correspondence for the consideration of the Canadian Government and intimating that the British Government will be no parties to proceedings for testing the validity of the Charter 63

Mar. 26. Mr. Gladman to the President of the Council (Canada), criticising the statements in the above-mentioned letter of 21st January and the Company's dealings with the North-West 64

PAGE.

1858. Apr. 14. The Provincial Secretary to Sir George Simpson, Governor of Rupert's Land, bespeaking for the Canadian exploring expedition of this year the assistance of the officers and servants of the Company 66

" 23. The Governor of Rupert's Land to the Provincial Secretary, promising the required assistance 67

Aug. 13. Joint Address of the Legislative Council and Assembly of Canada to Her Majesty, in view of the proposed renewal of the Hudson's Bay Company's license, asserting the title of Canada to a portion of the territory covered by it, and suggesting the surrender of other portions for purposes of settlement, and the reference of the questions of boundary and of the validity of the Charter to the Judicial Committee 68

" " Resolutions moved by Mr. W. McD. Dawson in the House of Assembly, respecting the limits of Canada and the claims of the Hudson's Bay Company under their Charter and License 69

" 16. The Governor-General to the Colonial Secretary, with Joint Address. 71

Sept. 9. Order in Council (Canada), recommending that the subject-matters of the Joint Address, and the establishment of a line of communication by railway or otherwise from Canada to the Pacific be urged upon the attention of the Imperial Government 71

" 9. The Governor-General to the Colonial Secretary, enclosing the foregoing 71

Oct. 26. The Colonial Secretary to the Governor-General, in acknowledgment 72

" 12. The Deputy Governor of the Hudson's Bay Company to the Colonial Secretary, conveying the refusal of the Company to be consenting parties to any proceeding for testing the validity of their Charter 72

Nov. 3. The Under-Secretary to the Deputy Governor of the Hudson's Bay Company in reply, urging the Company to reconsider their decision and to become party to a reference to the Judicial Committee, and intimating the purpose of the Colonial Secretary, in the event of their continued refusal, of taking steps for closing the controversy, for securing a definite decision, and for putting an end to their license to trade 72

" 10. The Deputy Governor of the Hudson's Bay Company reiterating the Company's refusal 74

Dec. 16. The Law Officers, Sir Fitzroy Kelly and Sir H. Cairns, to the Colonial Secretary, advising that proceeding for repeal of the Company's Charter should be by *scire facias* 75

" 22. The Colonial Secretary to the Governor-General, suggesting that the Canadian Government take steps to obtain the writ of *scire facias* 76

PAGE.

1859. Jan. 28. The Colonial Secretary to the Governor of the Hudson's Bay Company, intimating that the Company's license will not be renewed for a term of years, but offering an extension for one year.... 76

Feb. 2. The Governor of the Hudson's Bay Company to the Colonial Secretary, in acknowledgment, and promising an early reply 77

" 8. The Governor of the Hudson's Bay Company to the Colonial Secretary, declining an extension for one year ; offering to accept renewal for 21 years, terminable at two years' notice ; setting forth the Company's present position respecting the questions in controversy : and stating their continued adhesion to the principles of the letter of 18th July, 1857, *ante* 77

" 11. The Colonial Secretary to the Governor-General, pressing for the reply of the Canadian Government to the proposal of his despatch of 22nd December, 1858, *ante*..... 80

Mar. 9. The Under-Secretary to the Governor of the Hudson's Bay Company, intimating that the Canadian Government desire to consult the Legislature before coming to a decision ; refusing the renewal for 21 years, but offering to make the extension two years instead of one ; characterizing the proposals of the letter of 18th July, 1857, as insufficient and illusory ; re-affirming the advisability of the Company's consent to a proceeding for testing the validity of the Charter, and shewing the favourable position in which they would be placed thereby, whatever the decision 81

" 10. The Colonial Secretary to the Governor-General, transmitting his correspondence with the Hudson's Bay Company and intimating that if the decision of the Canadian Government and Legislature does not reach him by 1st May, the Imperial Government must take such proceedings as to trying the validity of the Charter as they may be advised..... 84

" 15. The Chairman of the Hudson's Bay Company to the Colonial Secretary, in reply to the letter of 9th March, conveying the Company's refusal to be party to the suggested proceedings, and declining the offer of a two years' extension 84

" 18. The Colonial Secretary to the Governor-General, urging the immediate answer of the Canadian Government as to their intention to take proceedings by *scire facias*..... 86

April 1. The Under-Secretary to the Governor-General, transmitting the above letter of 15th March..... 86

" 4. The Governor-General to the Colonial Secretary, intimating that the Canadian Government will not advise proceedings for testing the validity of the Charter, but that they are of opinion that the boundaries of Canada should be speedily and accurately defined. 86

PAGE.

1859. April 29. Joint Address of the Legislative Council and Assembly of Canada to Her Majesty, representing that the onus of litigation respecting the validity of the Charter should be assumed by the Imperial Government, and that the question of the future of the Territories should not be made to depend upon the mere legal view which may be taken of such validity 87

1862. Mar. 8. The Governor-General to the Colonial Secretary, as to organizing the Saskatchewan territory under 22 and 23 Vic., cap. 26.... 88

Apr. 16. The Colonial Secretary to the Governor-General, pointing out that the Act in question does not apply to territories claimed to be within the limits of the Hudson's Bay Company's Charter, and that consequently the organization of Saskatchewan cannot be undertaken 88

" 15. The Provincial Secretary to Mr. Dallas, Governor of Rupert's Land, proposing a scheme of overland road and telegraphic communication with the Pacific, and desiring the co-operation and practical aid of the Company, without reference to disputed rights 88

" 16. The Governor of Rupert's Land to the Provincial Secretary, declining the proposal, on the ground that the settlement of the Saskatchewan and Red River valleys to which it would lead, would impair the Company's sources of supply of winter food for their northern posts and otherwise interfere with their trade, but intimating that the Company might be prepared to surrender all their chartered rights on equitable terms..... 90

1862. Apr. 24. Order in Council (Canada), recommending the transmission to the Colonial Secretary of a copy of the correspondence relating to the proposed overland communication with the Pacific..... 91

" 25. The Governor-General to the Colonial Secretary, transmitting the correspondence, and urging the Imperial Government to take such steps as may enable Canada to carry out the project 91

May 19. The Governor of the Hudson's Bay Company to the Colonial Secretary, intimating that the Company cannot practically aid, but will not oppose, the project; pointing out the difficulties and dangers to be encountered in passing through the "vast desert" between Red River and the Rocky Mountains; and renewing the offer of surrender of the Company's territorial rights on equitable terms..... 92

June 3. The Colonial Secretary to the Governor-General, transmitting the foregoing, and conveying the desire of the Imperial Government to co-operate in a proper scheme not involving a grant of Imperial funds 93

PAGE.

1862. Oct. 17. Report of Postmaster-General Foley (Canada), upon the proposed scheme, and recommending an appropriation 94

1863. Feb. 9. Order in Council (Canada), approving the foregoing report and recommendation 97

" 27. The Governor-General to the Colonial Secretary, transmitting the two last documents 97

Apr. 28. Mr. Watkin to the Colonial Secretary, with proposals for construction of overland road and telegraph line 97

" " Heads of such proposal 98

May 1. The Under-Secretary to Mr. Watkin, approving the proposal, subject to modifications of details, and promising grant of Imperial Crown lands..... 99

" " The Colonial Secretary to the Governor-General, transmitting the correspondence, and recommending the scheme for the consideration of the Canadian Government 100

1864. Feb. 18. Order in Council (Canada), representing that the proposals are unsatisfactory, setting forth the expediency of settling the north-western boundary of Canada, and recommending the assertion of the claim of Canada to such portion of the North-West as was in possession of France at the conquest 100

" 19. The Governor-General to the Colonial Secretary, with the preceding. 101

July 1. The Colonial Secretary to the Governor-General, referring to pending negotiations with the Hudson's Bay Company for surrender of their territorial rights to the Crown; and suggesting that if the Canadian Government are desirous of assisting, and of accepting the Government of the territory, a delegate be sent; and that if not so desirous, they represent their views as to the North-West boundary 101

Nov. 11. Order in Council (Canada), in reference to the foregoing despatch, representing the views of the Canadian Government, that the negotiations with the Hudson's Bay Company be continued solely by the Imperial Government; that upon their conclusion Canada will be prepared to arrange for the annexation of the available territory; and that as a first step the Company's territorial claims and claim to exclusive rights of trade should be extinguished; and intimating that the Hon. George Brown will communicate the views of the Government more fully.... 102

1865. Jan. 26. Report of the Hon. George Brown, President of the Executive Council (Canada), respecting his mission to England and the negotiations between the Imperial Government and the Hudson's Bay Company, and giving an abstract of the correspondence (not elsewhere published) which had passed 105

PAGE.

1865. Mar. 24. Order in Council (Canada), recommending the appointment of Messrs. Macdonald, Cartier, Brown and Galt, as a Ministerial Delegation to England upon, *inter al.*, the arrangements necessary for the settlement of the North-West Territory, and Hudson's Bay Company's claims 111

" 27. Order in Council (Canada), approving of the above report of the Hon. George Brown, and recommending that negotiations be taken up by the Ministerial Delegation to England at the point to which they had been brought by the President of the Council. 112

June 17. The Colonial Secretary to the Governor-General, advising that the Canadian delegation desired that the North-West Territory should be made over to Canada, and had undertaken to negotiate with the Hudson's Bay Company for the termination of their rights on condition that the indemnity, if any, should be raised under Imperial guarantee; which was acceded to 112

July 12. Report of the Delegates to England, to the effect that being convinced of the impossibility of enforcing the end sought by Canada without long-protracted, vexatious and costly litigation, the Hudson's Bay Company being in possession, and the Imperial authorities appearing unwilling to ignore rights which had frequently received *quasi* recognition at their hands—they deemed it best, in the interest of Canada, to propose the cession of the North-West and Hudson's Bay Company's territories, subject to the Company's rights—the compensation to be met by a guaranteed loan 112

Aug. 16. The Governor-General to the Colonial Secretary, with certain papers 114

1866. Jan. 18. Mr. McEwen (acting on behalf of a company of Anglo-American capitalists) to the Governor of the Hudson's Bay Company, enquiring whether the Company would dispose of its cultivable territory for purposes of colonization..... 115

" 24. The Secretary of the Hudson's Bay Company to Mr. McEwen, expressing the Company's willingness to dispose of a portion of territory 115

Feb. 6. The Governor of the Hudson's Bay Company to the Colonial Secretary, enclosing copy of Mr. McEwen's letter of 18th January with other papers..... 115

" 20. The Under-Secretary to the Governor of the Hudson's Bay Company, acknowledging receipt of last mentioned papers, and, in reference to Mr. McEwen's scheme, reminding the Company of the desire of the Canadian Delegates, assented to by Her Majesty's Government, in regard to the Hudson's Bay Company's territories, and which it is necessary to keep in view 115

PAGE.

1866. Feb. 24. The Colonial Secretary to the Governor-General, transmitting the two foregoing letters 116

Mar. 1. The Governor of the Hudson's Bay Company to the Under-Secretary, in reply to above letter of the 20th February, and enquiring for how long a period the option is to remain to Canada.. 116

" 3. The Colonial Secretary to the Governor-General, with copy of foregoing letter, and desiring to know the wishes of the Canadian Government in the matter of the proposed purchase of the Company's rights by Canada 117

June 22. Order in Council (Canada), protesting against the alienation and sale of Hudson's Bay territory to capitalists, and against the Company's pretensions of title to the North-Western Territories... 118

" 23. The Governor-General to the Colonial Secretary, transmitting the foregoing Order in Council..... 120

July 17. The Governor of the Hudson's Bay Company to the Under-Secretary, calling special attention to impending inroads of Americans into the North-West, and urging a speedy settlement of the question of its future government..... 120

Aug. 1. The Colonial Secretary to the Governor-General, enclosing the foregoing letter 122

" 6. "The British Columbia Act, 1866:" extracts showing the boundaries of that Province. (Imp. Act, 29 and 30 Vic., cap. 67)... 122

" 18. The Governor-General to the Colonial Secretary, respecting the proposed purchase by the Canadian Government of the territorial rights of the Hudson's Bay Company, which it is undesirable to decide upon pending the confederation of the Provinces.... 123

Sep. 8. The Colonial Secretary to the Governor-General, in acknowledgment. 123

1867. Mar. 29. "The British North America Act, 1867:" extracts. (Imp. Act, 30 and 31 Vic., cap. 3) 123

(A note here sets out the boundaries of the Provisional Judicial District of Algoma)..... 125

June 14. Memorandum of the Commissioner of Crown Lands (Canada), respecting road and water communication from Lake Superior across the Height of Land to the Savanne River..... 125

" 18. Order in Council (Canada), approving of above memorandum 126

Oct. 4. Report of the Superintendent of Colonization Roads (Ontario) on the same subject 127

Aug. 23. The Colonial Secretary to the Governor-General, representing the urgency of the question of the Hudson's Bay Territory, and that Canada should decide upon her course of action 127

PAGE.

1867. Dec. 9. Resolution of the House of Commons (Canada) for address to the Governor-General, praying for copies of two maps furnished to the Government of the late Province of Canada by the Hudson's Bay Company in 1864 128

" 12. Resolutions of the Parliament of Canada, respecting the transfer of Rupert's Land and the North-Western Territory to the Dominion 128

" 16&17. Joint Address to Her Majesty founded on above resolutions.... 128

" 21. The Governor-General to the Colonial Secretary, transmitting the foregoing Address 129

" 28. Order in Council (Canada) on proposed transfer of Rupert's Land and North-West Territory to Canada 129

" 28. Report of Minister of Public Works upon which above order was founded 130

1868. Jan. 1. The Governor-General to the Colonial Secretary, transmitting the Resolutions and Order in Council, and calling attention to the eighth resolution, not incorporated in the Address to Her Majesty 130

" 18. The Colonial Secretary to the Governor-General, acknowledging despatches and Address, and advising that they will receive early attention 131

" 15. The Governor of the Hudson's Bay Company to the Colonial Secretary, recalling the assumed rights of the Company under their Charter; claiming that Canada should, prior to transfer, arrange with the Company as to the terms; and that if judicial investigation of the extent of their territorial rights under the Charter is desired, the reference should be to the Judicial Committee 131

" 18. The Under-Secretary to the Governor of the Hudson's Bay Company, acknowledging the preceding letter 132

" 18. The Under-Secretary to the Governor of the Hudson's Bay Company, transmitting copy of despatch from the Governor-General of Canada, and copy of Address to the Queen 133

" 25. The Governor of the Hudson's Bay Company to the Colonial Secretary, in review of the Company's position and rights, and calling attention to certain observations of Sir John Macdonald and Mr. Holton (extracts enclosed) 133

(*a*) Extract from speech of the Hon. Mr. Holton, respecting terms of admission of Hudson's Bay Territory. 137

(*b*) Extract from speech of Sir John A. Macdonald, advocating the taking possession of the Hudson's Bay Company's territories, and leaving the Company to the after-assertion of their rights as they might be advised 137

PAGE.

1868. Apr. 23. The Colonial Secretary to the Governor-General, intimating the assent of the Imperial Government to the prayer of the Address of the Canadian Parliament for the surrender of Rupert's Land and the North-West Territory, so soon as it can be done with a just regard to the rights of the Hudson's Bay Company. 138

" 23. The Under-Secretary to the Deputy-Governor of the Hudson's Bay Company, requesting statement of terms on which the Company would be prepared to surrender Rupert's Land to Canada.... 139

July 31. "The Rupert's Land Act, 1868," for enabling Her Majesty to accept, upon terms, a surrender of the lands, privileges and rights of the Hudson's Bay Company, and to transfer the same to Canada. (Imp. Act, 31 and 32 Vic., cap. 106) 139

Aug. 8. The Colonial Secretary to the Governor-General, enclosing the above Act, and informing him that the Colonial Office would enter into negotiations with the Hudson's Bay Company, as to the terms upon which they would surrender their rights 140

Sep. 9. The Governor-General to the Colonial Secretary, intimating the desire of the Canadian Government to send delegates to take part in the negotiations with the Hudson's Bay Company (telegram).. 141

" 11. The Colonial Secretary to the Governor-General, in reference to proposed delegation (telegram)..... 141

" 14. The Governor-General to the Colonial Secretary, on the same subject (telegram)..... 141

" 17. The Colonial Secretary to the Governor-General, on the same subject (telegram)..... 141

" 18. The Governor-General to the Colonial Secretary, on the same subject (telegram)..... 141

" 18. The Colonial Secretary to the Governor-General, on the same subject (telegram)..... 142

" 22. The Governor-General to the Colonial Secretary, on the same subject (telegram)..... 142

Oct. 1. Order in Council (Canada), appointing Sir George Cartier and Hon. William McDougall a delegation to proceed to England for the purpose of arranging for the acquisition of Rupert's Land .. 142

" 1. Memorandum of the Delegates, recommending that they be authorized to also arrange for the admission of the North-West Territory into union with Canada, and either with or without Rupert's Land 142

" 1. Order in Council (Canada), approving of the recommendation of Delegates above referred to 143

PAGE.

1868. Oct. 27. The Governor of Hudson's Bay Company to the Colonial Secretary, proposing modified terms of surrender of Rupert's Land..... 143

Dec. 1. The Under-Secretary to the Governor of the Hudson's Bay Company, rejecting the Company's proposed terms of surrender, and making new proposals... 145

" 22. The Deputy-Governor of the Hudson's Bay Company to the Under-Secretary, protesting against the construction of the Red River Road, as a trespass by Canada upon the Company's freehold .. 148

Enclosures referred to in above letter—Extracts from letters of Mr. MacTavish, of October 10th and 11th, 1868..... 148

" 30. The Under-Secretary to the Canadian Delegates, on the same subject, and asking for explanations 148

1869. Jan. 16. The Canadian Delegates to the Under-Secretary, on the same subject, with explanations, but denying the Company's title, and asserting that of Upper Canada to the country between the Lake of the Woods and Red River 149

Feb. 2. The Governor of the Hudson's Bay Company to the Under-Secretary, in reference to the above letter of the Canadian Delegates, charging that Canada is, pending the negotiations for purchase, exercising rights of ownership by virtue of an old claim, repeatedly advanced, but denied by the Company ; and claiming the protection of the Colonial Minister..... 151

Jan. 13. The Governor of the Hudson's Bay Company to the Under-Secretary, in reply to the letter of 1st December last, criticizing the proposed terms of transfer, and suggesting a money compensation as being more satisfactory to the Company 152

" 18. The Under-Secretary to the Canadian Delegates, enclosing the preceding letter for their observations thereon 155

Feb. 8. The Canadian Delegates to the Under-Secretary, in general review of proposed terms of transfer and of past negotiations, setting forth Canada's title to the North-West and North by virtue of the French possession, and making counter-proposals 155

" 22. The Under-Secretary to the Governor of the Hudson's Bay Company, enclosing the preceding, and inviting a statement of the Company's objections, if any, to the counter-proposals of the Canadian Delegates 167

" 26. The Governor of the Hudson's Bay Company to the Under-Secretary, in reply 168

Mar. 9. The Under-Secretary to the Governor of the Hudson's Bay Company, proposing new terms of surrender 170

PAGE.

1869. Mar. 9. The Under-Secretary to the Canadian Delegates, enclosing copy of the preceding, and promising the Imperial guarantee to a loan of £300,000 if proposed terms accepted 172

" 12. Resolutions of the Governor and Committee of the Hudson's Bay Company, respecting modifications of proposed terms of transfer 173

" 13. The Canadian Delegates to the Governor of the Hudson's Bay Company, whereby it appears that the Delegates have accepted the new proposals for transfer, but will not consent to any modifications 173

" 16. The Governor of the Hudson's Bay Company to the Canadian Delegates on the same subject, and as to settlement of details 174

" 18. The Canadian Delegates to the Governor of the Hudson's Bay Company, respecting the Company's resolutions in modification of the proposed terms of transfer 175

" 22. Memorandum of provisional agreement between the Canadian Delegates and the Directors of the Hudson's Bay Company in regard to certain details 176

" 27. The Canadian Delegates to the Under-Secretary, as to delay of the shareholders of the Hudson's Bay Company in accepting the proposals for transfer, and asking for transfer of the North-West Territories, apart from Rupert's Land, in default 177

" 29. Memorandum of further agreement between one of the Delegates and the Governor of the Company respecting details of proposed transfer 177

April 3. The Under-Secretary to the Governor of the Hudson's Bay Company, intimating the acceptance, by the Canadian Delegates, of the proposed terms 178

" 10. The Governor of the Hudson's Bay Company to the Under Secretary, transmitting resolution of shareholders in acceptance of the proposed terms 178

" 10. The Colonial Secretary to the Governor-General, on the subject of the conclusion of the negotiations for transfer..... 179

May 8. Report of the Canadian Delegates to the Governor-General, on the subject of their negotiations with the Imperial Government for the transfer of Rupert's Land and the North-Western Territory 180

" 14. Order in Council (Canada), approving of the above report and of the terms of transfer..... 181

" 17. Message from the Governor-General to the House of Commons (Canada), transmitting for their consideration the report of the Delegates 182

PAGE.

1869. May 28. Resolutions of the Parliament of Canada in acceptance of the transfer of Rupert's Land and the North-Western Territory 182

" 29&31. Joint address of the Legislative Council and Assembly of Canada to Her Majesty in acceptance of the transfer 183

June 22. Dominion Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada. (32-3 Vic., cap. 3)..... 185

Nov. 3. Extract from the Speech of the Lieutenant-Governor, at the opening of the Legislature..... 185

" 19. Deed of Surrender of Rupert's Land : the Hudson's Bay Company to Her Majesty..... 185

Schedule thereto, shewing the Company's posts and the quantity of land secured to each of them 188

" 23. The Governor-General to the Colonial Secretary, respecting the disturbances in the North-West, and consequent detention of Lieutenant-Governor McDougall (telegram)..... 191

" 27. The Governor-General to the Colonial Secretary on the same subject, and advising postponement of transfer in consequence (telegram) 191

" 30. The Colonial Secretary to the Governor-General on the same subject, and recalling the state of the negotiations for transfer..... 191

Dec. 16. Order in Council (Canada), setting forth the advisability of postponement of transfer, in view of the disturbances in the Red River Settlement 193

" 28. The Governor of the Hudson's Bay Company to the Under-Secretary, urging that the Canadian Government should carry out their engagements notwithstanding the disturbances at Red River.. 196

1870. Jan. 8. The Under-Secretary to the Governor of the Hudson's Bay Company, respecting the proposed postponement of the transfer, and approving thereof 197

" 8. The Colonial Secretary to the Governor-General, transmitting copies of the two last-mentioned letters 198

May 12. Dominion Act to amend and continue 32 and 33 Vic., cap. 3, and to establish and provide for the Government of the Province of Manitoba. (33 Vic., cap. 3) 198

June 23. Imperial Order in Council for the admission of Rupert's Land and the North-Western Territory into the Dominion 200

Schedules referred to in above Order in Council 203

Dec. 29. Report of the Minister of Justice (Canada), advising Imperial legislation for confirmation of Manitoba Act, and for authorizing the establishment and the alteration of the limits of Provinces.... 203

PAGE.

1871. June 29. "The British North America Act, 1871," in which the suggestions of the above Report are embodied. (Imp. Act, 34 and 35 Vic., cap. 28) 205

July 14. Memorandum of Hon. J. Sandfield Macdonald, Attorney-General of Ontario, calling attention to the necessity which exists for the settlement of the boundary and for the appointment of a Commission 205

" 17. The Lieutenant-Governor of Ontario to the Secretary of State (Canada), urging the settlement of the boundary line between Ontario and the North-West Territory 206

" 20. The Secretary of State (Canada), hereinafter called the Secretary of State, to the Lieutenant-Governor of Ontario, acknowledging his despatch 207

" 28. Order in Council (Canada), appointing Eugène E. Taché, Esquire, as Boundary Commissioner on behalf of the Dominion 207

" 31. The Secretary of State to the Lieutenant-Governor, advising him of the appointment of Mr. Taché as such Commissioner 207

Sep. 19. Order in Council (Ontario), appointing the Hon. William McDougall as Ontario Boundary Commissioner 208

" 20. The Assistant Provincial Secretary to the Hon. W. McDougall, advising him of his appointment 208

" 21. The Lieutenant-Governor to the Secretary of State, advising him of such appointment 208

" 22. The Hon. W. McDougall to the Assistant Provincial Secretary, accepting the appointment 209

" 26. The Acting Under-Secretary of State to the Lieutenant-Governor, acknowledging his despatch of the 21st inst 209

Oct. 1. Report of J. S. Dennis, Dominion Surveyor-General, to Sir John A. Macdonald, Minister of Justice, on the question of the boundary between Ontario and the North-West Territory 209

List of papers and maps accompanying the above report 213

Nov. 28. Order in Council (Canada), setting forth that the ascertaining and fixing of the boundary line is of much consequence and should be expedited, and recommending that no licenses or patents for land in the disputed territory be granted pending settlement .. 213

" 30. The Secretary of State to the Lieutenant-Governor, enclosing the foregoing 214

1872. Jan. 4. Order in Council (Ontario), respecting above subjects and the instructions proposed to be given to the Dominion Commissioner. 214

PAGE.

1872. Jan. 6. The Lieutenant-Governor to the Secretary of State, referring to the subject of patents of lands in the disputed territory; concurring in the view that it is of consequence that the fixing of the boundary should be expedited; and requesting a draft of the instructions proposed to be given by the Dominion Government to their Commissioner 215

" 11. The Secretary of State to the Lieutenant-Governor, acknowledging the above 215

Mar. 5. The Acting Assistant Provincial Secretary to the Hon. W. McDougall, asking for his report, etc 216

" 9. The Hon. W. McDougall to the Provincial Secretary, respecting his action under his Commission, and promising to submit a preliminary memorandum 216

" 11. Report of Sir John A. Macdonald, Minister of Justice, respecting the draft of instructions to be given to the Dominion Commissioner. 218

Draft of instructions annexed to the above report 218

" 12. Order in Council (Canada), respecting the draft instructions, and recommending that a copy be sent to the Government of Ontario. 219

" 14. The Secretary of State to the Lieutenant-Governor, transmitting copy of draft instructions 220

" 15. The Secretary of State to the Lieutenant-Governor, substituting a tracing for that which accompanied the draft of instructions and requesting return of the old one 220

" 19. The Lieutenant-Governor to the Secretary of State, acknowledging despatches and returning tracing as requested 220

" 19. The Acting Assistant-Secretary to the Hon. W. McDougall, requesting him to submit his further report 221

Preliminary memorandum of the Hon. W. McDougall on the subject of the Western Boundary of Ontario 221

" 25. Order in Council (Ontario), advising that the Government of Canada be informed that the line claimed by Ontario is very different from the one defined in said draft instructions, and that the Ontario Commissioner be instructed to abstain from taking any further action 226

" 26. The Provincial Secretary to the Hon. W. McDougall so instructing him 227

26. The Lieutenant-Governor to the Secretary of State, transmitting Order in Council, and advising him that the Commissioner for Ontario had been instructed to abstain from any further action under his commission 227

PAGE.

1872. April 5. The Secretary of State to the Lieutenant-Governor, acknowledging the above 227

" 9. Order in Council (Canada), recommending that the Government of Ontario be invited to state their views as to the location of the boundary line 228

" 10. The Secretary of State to the Lieutenant-Governor, with the preceding, and asking for a description of the boundary line suggested on behalf of Ontario 229

" 19. Order in Council (Ontario), claiming (as per description annexed thereto) as Western boundary the meridian of the source of the Mississippi, and for Northern boundary a line north of the Height of Land; but submitting that there are grounds for contending, with former Governments of Canada, that the Western limit is further West, and that if the line suggested is not accepted the Province will not be bound 229

Proposed description above referred to 230

" 19. The Lieutenant-Governor to the Secretary of State, transmitting copy of the foregoing Order in Council 230

" 22. The Secretary of State to the Lieutenant-Governor, acknowledging same 230

" 24. The Secretary of Public Works (Canada) to the Secretary of State, transmitting accounts for maintenance of Police Force at Thunder Bay, and for advances in respect of Court House at Prince Arthur's Landing, and requesting that they be presented to the Government of Ontario for payment 231

" 26. The Secretary of State to the Lieutenant-Governor, forwarding said accounts 231

May 1. Report of the Minister of Justice, recommending the reference of the question of boundary to the Judicial Committee of the Privy Council of England, and the establishment of some joint system by way of provisional arrangement as to lands in the interim 231

" 16. Order in Council (Canada), approving of foregoing report 232

" 16. The Secretary of State to Lieutenant-Governor, enclosing the two preceding documents, and asking concurrence in their recommendations 232

May 31. Order in Council (Ontario), expressing regret that the Government of Canada is not prepared to negotiate for conventional boundaries; proposing reference to arbitration and the placing of the disputed territory within the limits of Ontario for criminal purposes, pending a settlement; and recommending that the Commissioner of Crown Lands take action with a view to establishing some provisional arrangement as to lands 233

PAGE.

1872. May 31. The Lieutenant-Governor to the Secretary of State, enclosing copy of the above Order 234

June 1. The Secretary of State to the Lieutenant-Governor, acknowledging same 235

" 10. Secretary of Public Works (Canada) to Secretary of State, enclosing accounts of moneys disbursed for maintenance of Police Force at Thunder Bay, and requesting them to be forwarded to the Ontario Government for payment 235

" 13. The Secretary of State to the Lieutenant-Governor, enclosing the above accounts 235

" 25. The Lieutenant-Governor to the Secretary of State, with cheques in payment of expenditure on Court House at Prince Arthur's Landing 236

" 26. Order in Council (Ontario), respecting the matters above referred to, and pointing out that whilst the Government of Canada in claiming these payments admit the title of Ontario to the territory westward of Thunder Bay, yet that Government is at the same time proposing, as westerly boundary, a line which would deprive the Province of the territory in question 236

July 2. The Under-Secretary of State to the Lieutenant-Governor, acknowledging despatches relating to the accounts and the receipt of cheques 237

" 15. Bank of Montreal deposit receipt for the moneys in question 237

" 24. The Secretary of Public Works (Canada) to the Provincial Secretary, enclosing duplicate receipt 237

Nov. 7. Order in Council (Canada), respecting matters dealt with by Order in Council (Ontario) of 31st May last; re-affirming the view that the boundary of Ontario is, on the north, the Height of Land and, on the west, the meridian of the junction of the Ohio and Mississippi; and renewing proposals for reference to the Judicial Committee of Privy Council 238

" 12. The Secretary of State to the Lieutenant-Governor, transmitting copy of the foregoing Order in Council 239

" 25. Report of the Secretary of State, recommending that no patents or licenses for land be granted at the head of Lake Superior, pending settlement of boundary, and suggesting that the Government of Ontario should in like manner refrain 239

1873. Jan. 8. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature 240

" 20. Address of the Legislative Assembly for the production of Mr. Cauchon's memorandum and Chief Justice Draper's report and certain papers on the boundary 240

PAGE.

1873. Jan. 31. The Lieutenant-Governor to the Secretary of State, enclosing copy of the resolution, and asking for the papers 240

Feb. 3. The Secretary of State to the Lieutenant-Governor, acknowledging ing the same..... 240

Mar. 14. The Lieutenant-Governor to the Secretary of State, calling attention to his despatch and requesting reply..... 241

" 18. The Secretary of State to the Lieutenant-Governor, advising that certain of the documents asked for were not in the possession of the Government, and directing where to find copies..... 241

Dec. 26. The Secretary of State to the Lieutenant-Governor, calling attention to the Order in Council, 7th November, 1872, and requesting a decision as to the proposed reference to the Judicial Committee 242

1874. Jan. 8. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature..... 242

Mar. 23. Resolutions of the Legislative Assembly (Ontario), approving of a reference to arbitration, or to the Privy Council of England, in the discretion of the Lieutenant-Governor in Council, and of the adoption of a provisional boundary line..... 242

June 2. Report of the Minister of the Interior, recommending the adoption of a provisional boundary line 242

" 3. Order in Council (Canada), approving of above report..... 243

" 5. The Under-Secretary to the Lieutenant-Governor, enclosing copy of the foregoing, and suggesting that the Ontario Government appoint a Commissioner to meet the Minister of the Interior to arrange for the adoption of such provisional boundary line.... 244

" 26. Memorandum of Agreement for provisional boundary..... 244

July 8. Order in Council (Canada) approving of the above 245

" 9. Order in Council (Ontario) approving of the Agreement 245

" 10. The Lieutenant-Governor to the Secretary of State, transmitting a copy of such Order in Council..... 246

" 22. The Under-Secretary of State to the Lieutenant-Governor, transmitting a copy of the Order in Council of 8th instant..... 246

Nov. 10. Report of Hon. Adam Crooks, Member of the Executive Council (Ontario), reporting that the Dominion Government had consented to a reference to arbitration, and had nominated an arbitrator to act with Chief Justice Richards, nominated on behalf of Ontario, such two arbitrators to agree upon a third; and recommending concurrent action for obtaining legislation for giving binding effect to the conclusions which may be arrived at 246

PAGE.

1874. Nov. 12. Order in Council (Canada) approving of reference to arbitration, submitting the name of the Hon. L. A. Wilmot as Dominion Arbitrator, and recommending concurrent action for obtaining legislation as aforesaid 247

" 12. Extract from the speech of the Lieutenant-Governor at the opening of the Legislature 248

" 21. The Under-Secretary of State to the Lieutenant-Governor, enclosing copy of the Order in Council of 12th inst 248

" 21. The Under-Secretary of State to the Hon. L. A. Wilmot, advising him that he had been appointed Arbitrator 248

" 25. Order in Council (Ontario) approving of Hon. Adam Crooks' report of the 10th November 249

Dec. 3. The Assistant Provincial Secretary to Chief Justice Richards, notifying him of his appointment as Arbitrator 249

1875. Nov. 25. Extract from the speech of the Lieutenant-Governor at the opening of the Legislature 250

1876. Apr. 12. Dominion Act creating the district of Keewatin (39 Vic., cap. 21) 250

Dec. 12. The Governor of the Hudson's Bay Company to the Secretary of State (Canada), with information relating to the boundaries of the Company's territories and the limits of their trade, and enclosing maps and documents for the purposes of the arbitration 251

1877. Jan. 3. Extract from the Speech of Lieutenant-Governor at the opening of the Legislature 252

Feb. 28. Manitoba Act, defining the boundaries of that Province (40 Vic., cap. 2.) 252

Mar. 22. Messrs. Bischoff, Bompas and Bischoff, Dominion Agents in England, to Secretary of State (Canada), reporting the results of their search of the records of the Hudson's Bay Company, and enclosing maps for the purposes of the arbitration 254

Sep. 26. Sir John Rose to Hon. A. Mackenzie, on the subject of searches made under his instructions at the Colonial, Foreign and Rolls Offices and in the Hudson's Bay Company's archives,, for documents relating to the boundaries, and advising that further search would be unattended with any result 257

Mr. McDermott to Sir John Rose, reporting that he had been engaged for some time in searching among public documents for papers or maps defining the western and northern boundaries of Ontario, with result of his search 257

1878. Jan. 9. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature 259

PAGE.

1878. Mar. 18. Mr. Scoble, Agent for Ontario, to the Attorney-General, on the result of his search in London and Paris for further evidence bearing on the boundaries of Ontario 259

Apr. 24. Memorandum of the Minister of the Interior, recommending that leases be put on the same footing as patents in regard to the provisional boundary line 262

" 29. Order in Council (Canada) approving of above 262

May 1. The Under-Secretary of State to the Provincial Secretary, enclosing the two preceding documents 262

" 3. The Assistant Provincial Secretary to the Secretary of State, acknowledging same 263

" 7. Report of the Attorney-General of Ontario, recommending that leases be put upon the same footing as patents in regard to provisional boundary line 263

" 9. Order in Council (Ontario) approving of above report 264

" 11. The Assistant Provincial Secretary to the Secretary of State, enclosing copies of the two preceding documents 264

" 13. The Under-Secretary of State to the Minister of Interior, enclosing copies of the three last-mentioned documents 265

" 27. Memorandum of the Deputy Minister of Justice, advising the procuring of copies of statements submitted by the Hudson's Bay Company to the Law Officers in 1849, and of their opinion thereon 265

" 29. The Under-Secretary of State to the Governor-General's Secretary, in regard to procuring such copies 265

July 31. Order in Council (Ontario) approving the recommendations that Chief Justice Harrison be appointed arbitrator in the room of the Hon. W. B. Richards; that the award of the three arbitrators, or a majority of them, be taken as final; and that concurrent action with the Government of the Dominion be had in obtaining legislation thereon 266

" 31. Order in Council (Canada) approving the selection of Sir Francis Hincks (in place of Hon. L. A. Wilmot, deceased), and of Sir Edward Thornton and Chief Justice Harrison as arbitrators, and recommending that their award be final and conclusive .. 266

Statement of the Case of the Province of Ontario, respecting the westerly and northerly boundaries; prepared by the Hon. Oliver Mowat, Attorney-General of the Province 267

Statement of the Case of the Dominion; prepared by Hugh MacMahon, Q.C. 277

Supplement to the Case of the Dominion 298

PAGE.

1878. Aug. 1-3. Report of proceedings before the Arbitrators 304–370

Argument of the Attorney-General of Ontario, counsel for the Province 304

Argument of Mr. Hodgins, Q.C., counsel for the Province.... 327

Argument of Mr. MacMahon, Q.C., counsel for the Dominion.. 338

Argument of Mr. Monk, counsel for the Dominion 363

The Attorney-General of Ontario in reply..... 369

" 3. The Award of the Arbitrators 370

Dec. 31. The Provincial Secretary to the Secretary of State, advising that a measure will be introduced at the approaching session of the Legislature to give effect to the award made by the arbitrators, and trusting that the same legislation may be had at Ottawa; and asking for maps, field notes, etc., relating to the awarded territory 371

1879. Jan. 8. The Under-Secretary of State to the Provincial Secretary, acknowledging the same 371

" 9. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature, calling the attention of the House to the settlement of the boundaries by the Award..... 372

Mar. 11. Ontario Act respecting the northerly and westerly boundaries of the Province (42 Vic., cap. 2)..... 372

May 2. The Assistant Provincial Secretary to the Secretary of State, enclosing the documents bearing on the subject of the boundaries, to assist in introducing necessary legislation..... 373

Sep. 23. The Assistant Provincial Secretary to the Secretary of State, respecting the necessary legislation to give effect to the award of the arbitrators; reviewing the question of boundary; and repeating the request for maps, field notes, etc., relating to the awarded territory..... 373

" 25. The Under-Secretary of State to the Provincial Secretary, acknowledging the above communication 377

Dec. 19. The Provincial Secretary to the Secretary of State, calling attention to the despatch of 31st December, 1878, as yet unanswered, and intimating that in view of the award having "definitely settled" the boundaries of the Province, the provisional arrangement is considered to be at an end..... 377

1880. Jan. 8. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature..... 378

PAGE.

1880. Jan. 20. Report of the Minister of Justice advising the disallowance of the Ontario Act respecting the administration of justice in the northerly and westerly parts of Ontario (42 Vic., cap. 19), unless the same be repealed within the time limited..... 378

Appendices to the above report:

"A."—Memorandum of J. S. Dennis as to boundary 381

"B."—Extracts from a former report of the Minister of Justice on a Bill passed in British Columbia for establishing Mining Courts..... 381

"C."—Extracts from a report of the Minister of Justice on a former Act of Ontario respecting Algoma..... 382

Feb. 12. Order in Council (Canada) approving of the above report..... 384

" 14. The Under-Secretary of State to the Provincial Secretary, transmitting copy of the Order in Council last mentioned..... 384

" 14. Address of the Legislative Assembly of Manitoba to the Governor-General, representing that it would be advisable to enlarge the boundaries of that Province, and that they had already, at the suggestion of the Privy Council of Canada, passed an Act to provide for such enlargement..... 385

" 17. The Under-Secretary of State to the Provincial Secretary, with copy of report of the Minister of Justice of 20th January last, with its Appendices..... 385

Mar. 3. Resolutions of the Legislative Assembly (Ontario) respecting the boundaries 386

" 13. The Secretary of State to the Lieutenant-Governor, enquiring whether the Ontario Government intend to address to the Dominion Government any communication with reference to the report of the Minister of Justice of 20th January last.... 387

" 15. Report of the Attorney-General of Ontario reviewing the report of the Minister of Justice of 20th January last, on the question of the disallowance of the Ontario Act respecting the administration of justice in the northerly and westerly parts of Ontario 388

" 15. Order in Council (Ontario) approving of the above report..... 392

" 15. The Lieutenant-Governor to the Secretary of State, enclosing copies of the two documents last mentioned..... 392

" 17. Further report of the Minister of Justice, withdrawing some of his objections to the Act in question in view of the above report of the Attorney-General, and recommending the disallowance notwithstanding 392

" 22. Order of the Governor-General in Council, disallowing the Act.... 394

PAGE.

1880. Mar. 22. Certificate of the Governor-General of date of receipt by him of the Act 394

" 22. The Secretary of State to the Lieutenant-Governor, transmitting the order of the Governor-General in Council of this date 394

" 25. The Lieutenant-Governor to the Secretary of State, requesting him to forward a copy of the report of the Minister of Justice, alluded to in his last communication 395

" 30. The Secretary of State to the Lieutenant-Governor, forwarding same 395

Apr. 15. Mr. Lyon, Stipendiary Magistrate, to the Deputy of the Attorney-General (Ontario), respecting the division of the disputed territory for Division Court purposes 395

" 23. The Attorney-General of Ontario to the Minister of Justice, on the subject of the administration of justice and of the license laws in the disputed territory, and enclosing a draft Bill 396

Draft Bill enclosed in the preceding letter: An Act for the administration of justice in the territory in dispute, etc. 397

May 7. Dominion Act respecting the administration of criminal justice in the territory in dispute between the Governments of Ontario and the Dominion. (43 Vic., cap. 36.) 400

Petition of the inhabitants of Rat Portage, etc., to the Lieutenant-Governor, for the establishment of a Division Court at Rat Portage 401

" 28. Order in Council (Ontario) establishing two Division Court divisions in the disputed territory west of the meridian of the most easterly point of Hunter's Island 402

July 31. Imperial Order in Council uniting to the Dominion all territories in British North America not already within its limits, excepting Newfoundland 402

1881. Jan. 13. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature 403

Feb. 1. The Attorney-General of Ontario to the Minister of Justice, again urging the necessity of legislation for confirmation of the award, and to make further provision for the administration of justice, and to recognize the authority of the Ontario Government to deal with the land and timber in the disputed territory; and enclosing new draft Bill to supply certain omissions in former Acts 403

Draft Bill enclosed in the foregoing letter: An Act to make further provision respecting the Administration of Justice in the Territory in dispute, etc. 404

PAGE.

1881. Feb. 7. The Minister of Justice to the Attorney-General of Ontario, acknowledging above letter and promising attention 406

Mar. 3. Resolutions of the Legislative Assembly of Ontario, regretting that the Award has not been confirmed by the Dominion Parliament, nor its validity recognized by the Dominion Government, and re-affirming the determination of the House to support the Government in all necessary steps to sustain the awarded rights of the Province 406

" 4. Manitoba Act to provide for the extension of the Boundaries of that Province (44 Vic., cap. 1) 407

" 4. The Lieutenant-Governor to the Secretary of State, with copy of resolutions of the Legislative Assembly of 3rd March instant.. 407

" 7. The Under-Secretary of State to the Lieutenant-Governor, acknowledging the above..... 408

" 15. The Lieutenant-Governor to the Secretary of State, protesting against the Bill introduced in the Dominion Parliament, providing for the extension of the boundaries of Manitoba, as an act of gross injustice to Ontario; urging its modification; and calling attention to the injuries occasioned to the interests of Ontario by the delay in confirming the Award..... 408

" 16. The Under-Secretary of State to the Lieutenant-Governor, acknowledging the above despatch 410

" 18. Amendments to the Bill for the extension of the boundaries of Manitoba, moved in the House of Commons by Messrs. Mills, Dawson, Blake and McDougall respectively, and having in view the limitation of the eastern boundary of Manitoba 410

" 21. Dominion Act, to provide for the extension of the boundaries of Manitoba (44 Vic., cap. 14) 412

" 21. An Act to continue in force, for a limited time, the Act forty-third Victoria, chapter thirty-six, relating to the Administration of Criminal Justice in the territory in dispute (44 Vic., cap. 15).. 413

Apr. 1. The Under-Secretary of State, in reply to petition from Rat Portage for the establishment of a Court of Civil Jurisdiction..... 413

" 30. Mr. Lyon, Stipendiary Magistrate, to the Deputy of the Attorney-General (Ontario), enclosing the foregoing letter..... 414

May 6. Lecture of Sir Francis Hincks, one of the Arbitrators, on the subject of the Boundary Award, and setting forth the grounds upon which the Arbitrators arrived at their decision..... 414

Sep. 30. Mr. Lyon, Stipendiary Magistrate, to the Attorney-General of Ontario, respecting the disputed jurisdiction of the Ontario Division Court at Rat Portage 431

PAGE.

1881. Nov. 1. Report of the Attorney-General of Ontario in general review of the Boundary Question 432

Dec. 31. The Lieutenant-Governor to the Secretary of State, calling attention to the unfortunate condition of the disputed territory in the absence of confirmation of the award; requesting to be informed what the best terms are to which the Government of the Dominion is prepared to agree; and alluding to the administration of justice and the dealings of the Dominion authorities with the lands and timber in the disputed territory 461

1882. Jan. 12. Extract from the Speech of the Lieutenant-Governor at the opening of the Legislature this year..... 466

" 13. Extract, being the third paragraph of the resolutions proposed for the Address in reply to the Speech of the Lieutenant-Governor, with reference to the boundaries 466

" 26. Amendment moved to this paragraph 466

" 26. Amendment to the amendment (carried) 467

" 27. The third paragraph as amended 467

" 27. The Secretary of State to the Lieutenant-Governor, with proposals respecting the boundary question and the administration of justice in the disputed territory 468

Feb. 18. The Lieutenant-Governor to the Secretary of State, in reply to the above 472

Mar. 9. Resolutions of the Legislative Assembly respecting the boundary question 485

" 9. Amendments proposed to the above resolutions 487

" 14. Return to an address of the House of Commons (Canada), for statement of timber and other licenses and grants by the Dominion Government within the disputed territory west of the meridian of the most easterly point of Hunter's Island (formerly known as the westerly provisional boundary line of Ontario)..... 489

Apr. 4. Resolutions of the House of Commons (Canada) with reference to the boundary dispute 490

May 17. Dominion Act to amend and further to continue in force the Act forty-third Victoria, chapter thirty-six, respecting the administration of criminal justice in the territory in dispute, etc. (45 Vic., cap. 31) 491

CORRECTIONS.

Page 84, line 8 from foot, *insert* "[9th]" after "5th."
" 127, line 21 from top, *read* "follow."
" 370, line 22 from top, *insert* "nearest" before "line."

CORRESPONDENCE, PAPERS AND DOCUMENTS,

OF DATES FROM 1856 TO 1882 INCLUSIVE,

RELATING TO THE

NORTHERLY AND WESTERLY BOUNDARIES

OF THE

PROVINCE OF ONTARIO.

Printed by Order of the Legislative Assembly of Ontario, of 9th March, 1882.

THE SECRETARY OF STATE FOR THE COLONIES* TO THE GOVERNOR-GENERAL.†

DOWNING STREET, 4th December, 1856.

SIR,—I am desirous of informing you, at the earliest period, of certain important questions which have recently been raised respecting the affairs of the Hudson's Bay Company in British North America, and of the steps which Her Majesty's Government have in contemplation regarding them.

You are aware that the Hudson's Bay Company claim, under the charter of 1670 and the various Acts of Parliament which they consider to have subsequently recognized it, rights of proprietorship, exclusive trade, taxation and government, over all the regions under British dominion watered by streams flowing into Hudson's Bay. The extent and ground of this claim are defined in the "Statement of Rights" printed in the annexed Parliamentary paper, and in the accompanying map.

The Hudson's Bay Company also claim, and actually exercise rights of exclusive trade, although not the ownership of the soil, over all the territory comprised in a certain license to trade, granted in the year 1838 by the Crown under the provisions of the Act "for regulating the fur trade," 1 and 2 George IV., cap. 66, of which license copy is also annexed to this despatch.

It has been intimated to me on the part of the Hudson's Bay Company, that as their license expires in 1859, and as a very long period is required before any important change of arrangements can be notified and acted on throughout the vast and distant regions affected by it, it will be very desirable that the views of Her Majesty's Government and of Parliament, as to the renewal of the license, should be ascertained as early as possible.

Her Majesty's Government have therefore determined on bringing the whole subject

* Hereinafter referred to as the Colonial Secretary.
† Sess. Papers, Can., 1857, Vol. 15, No. 17.

under the investigation of a Committee of the House of Commons at the earliest convenient time. The enquiry will be mainly directed to the question of the renewal of the license; but it must incidentally embrace the general position and prospects of the Hudson's Bay Company.

As many points may arise in the course of this enquiry which may affect the interests of Canada, I have to instruct you to consider, with the advice of your Council, the question whether it may be desirable to send witnesses to appear before the Committee, or in any other manner to cause the views of the Provincial Government, and the interests of the Canadian community, to be represented before this Committee.

I have, etc.,

H. Labouchere.

Governor Sir E. Head, Bart., etc., etc.

Minute of Council, dated 17th January, 1857, approved by the Governor-General.*

The Committee of Council have read with great satisfaction the despatch of the Secretary of State for the Colonies, of the 4th of December last, on the subject of the Hudson's Bay Company's occupation of the great north-western territory of America.

They rejoice that the important position and advantages of that great portion of the continent have received such prominent attention from the Imperial Government, and are to undergo the examination and consideration of a Committee of the House of Commons in England.

The Committee desire to urge the importance of ascertaining the limits of Canada in the direction of the territory over which the Hudson's Bay Company claim jurisdiction. The general feeling here is strongly that the Western boundary of Canada extends to the Pacific Ocean.

In this, or in any view, the tracing and fixing on the ground the line of separation between the United States and these territories of the north-west, is of great importance. The rapid settlement of Minnesota, shortly to be admitted a State of the American Union, renders this the more necessary, for, as civilization approaches the boundary, so will be increased the difficulty of maintaining the distinction between the rights of the two nations on the frontier.

Already the Committee have reason to believe that difficulties in this respect have occurred, or at least have been threatened, and the importance cannot be underrated of early guarding against any such.

The Committee are most anxious that Canadian interests should be properly represented before the proposed Committee of the House, and that opportunity should be afforded for carefully and closely watching any evidence that may be adduced before that body; and they will take the earliest occasion of suggesting to your Excellency the manner in which they conceive this can be best accomplished. Situated as Canada is, she necessarily has an immediate interest in every portion of British North America, and the question of the jurisdiction and title claimed by the Hudson's Bay Company is to her of paramount importance.

The Governor-General to the Colonial Secretary.*

Government House,

Toronto, C. W., 17th January, 1857.

Sir,—I have the honour to acknowledge your despatch of 4th December last, No. 179, relating to the Hudson's Bay Company.

* Sess. Papers, Can., 1857, Vol. 15, No. 17.

I now enclose a copy of a Minute of Council, which I have approved this day. At the same time, I desire to observe that I express no opinion of my own as to the fact that the Western boundary of Canada extends to the Pacific Ocean.

I have, etc.,

EDMUND HEAD.

The Right Hon. H. Labouchere, etc., etc.

REPORT OF A COMMITTEE OF THE EXECUTIVE COUNCIL, DATED 16TH FEBRUARY, 1857, APPROVED BY THE GOVERNOR-GENERAL.*

In furtherance of the Order in Council of the 27th January ultimo, directing the appointment of a Special Agent to proceed to England to represent Canadian rights and interests before the proposed Committee of the House of Commons, on the subject of the Hudson's Bay Territory, the Committee respectfully recommend that the instructions to be given to such Agent for his guidance in the matter referred to, be as follows :—

"The fact that a Parliamentary Committee will probably hear evidence and report to the House of Commons, on the subject of the Hudson's Bay Territory, makes it impossible for His Excellency to convey to you instructions which are not in themselves more or less vague.

"His Excellency cannot anticipate the nature of the evidence to be given, or forestall the conclusion to be arrived at by such a Committee. Even after the Committee shall have reported, the course likely to be taken by Parliament or by Her Majesty's Government can only be conjectured.

"You will not, therefore, expect to receive instructions of a very definite character, but His Excellency has full and complete confidence in your knowledge and discretion, and he confides this mission to you the more readily, because your position in the country is such as to imply an entire estrangement from all the ordinary ties of local or party politics.

"Immediately on your arrival in London, you will place yourself in communication with the Right Honourable the Secretary of State for the Colonies (to whom these instructions have been communicated), and as soon as any Parliamentary Committee on the subject of the Hudson's Bay Company or territory is constituted, you will take steps for offering to afford all information in your power relating to the interests or claims of Canada.

"You will consider it as part of your duty to watch over those interests by correcting any erroneous impressions, and by bringing forward any claims of a legal or equitable kind, which this Province may possess on account of its territorial position or its past history.

"You will not consider yourself as authorized to conclude any negotiation or to assent to any definite plan of settlement affecting Canada, without reporting the particulars of the same, and your own views thereon, to His Excellency in Council.

"His Excellency has full and complete confidence in the justice and consideration of Her Majesty's Government, and he is sure that the interests and feelings of Canada will be consulted, so far as is consistent with right and justice.

"The people of Canada desire nothing more.

"His Excellency feels it particularly necessary that the importance of securing the north-west territory against the sudden and unauthorized influx of immigration from the United States' side, should be strongly pressed. He fears that the continued vacancy of this great tract, with a boundary not marked on the soil itself, may lead to future loss and injury, both to England and to Canada. He wishes you to urge the expediency of marking out the limits, and so protecting the frontier of the lands above Lake Superior, about the Red River, and thence to the Pacific, as effectually to secure them

* Sess. Papers, Can., 1857, Vol. 15, No. 17.

against violent seizure or irregular settlement, until the advancing tide of emigrants from Canada and the United Kingdom may fairly flow into them, and occupy them as subjects of the Queen on behalf of the British Empire.

"With these objects in view, it is especially important that Her Majesty's Government should guard any renewal of a license of occupation (should such be determined on), or any recognition of rights in the Company, by such stipulations as will cause such license or such rights not to interfere with the fair and legitimate occupation of tracts adapted for settlement.

"It is unnecessary, of course, to urge in any way the future importance of Vancouver's Island, as the key to all British North America, on the side of the Pacific, situated as it is between the extensive seaboard of Russian America and the vast territory in the hands of the United States.

"His Excellency cannot foresee the course which a Committee of the House of Commons may see fit to pursue in the proposed enquiry, or determine beforehand on what points evidence may be required.

"At any moment, however, His Excellency will be ready to attend to your suggestions, and supply such information, either by documentary evidence, or by witnesses from Canada, as you think necessary, and he may be able to send over.

"You will, of course, act upon such instructions as you may from time to time receive."

Certified.

WM. H. LEE, C. E. C.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

TORONTO, 17th February, 1857.

SIR,—I have the honour to enclose a copy of a Minute of the Executive Council, approved by myself, embodying the instructions given to Chief Justice Draper, C.B., whom I have selected to proceed to England, with reference to the proposed enquiry into the matter of the Hudson's Bay Company and its territory in North America.

I have the fullest confidence in Mr. Draper's discretion and ability, and I believe that Her Majesty's Government may rely with confidence on any information derived from him.

I have, etc.,

EDMUND HEAD.

The Right Hon. H. Labouchere.

THE ASSISTANT PROVINCIAL SECRETARY TO CHIEF JUSTICE DRAPER.*

SECRETARY'S OFFICE,

TORONTO, 20th February, 1857.

SIR,—I have the honour, by command of His Excellency the Governor-General, to communicate to you hereby His Excellency's instructions for your guidance in connection with your mission to England, as the Special Agent appointed to represent Canadian rights and interests, before the proposed Committee of the House of Commons, on the subject of the Hudson's Bay Territory.

I am to premise, however, that as it is impossible to anticipate the nature of the evidence that may be taken, or the conclusion that may be arrived at by the Committee, or the course which Parliament or Her Majesty's Government may think proper to adopt

* Sess. Papers, Can., 1857, Vol. 15, No. 17.

on the report of the Committee, it is not in His Excellency's power to convey to you at present any instructions of a precise or definite character. His Excellency has, however, entire confidence in your knowledge and discretion, and he has the more readily entrusted the important mission to you, inasmuch as your high position in the Colony removes you from all the ordinary influences of local or party consideration.

Immediately on arriving in London you will place yourself in communication with the Right Honourable the Secretary of State for the Colonies (to whom these instructions have been communicated), and as soon as any Parliamentary Committee on the subject of the Hudson's Bay Company or Territory is constituted, you will take steps for offering to afford all information in your power relating to the interests or claims of Canada.

You will consider it as part of your duty to watch over those interests, by correcting any erroneous impressions, and by bringing forward any claims of a legal or equitable kind, which this Province may possess on account of its territorial position or its past history.

You will not consider yourself as authorized to conclude any negotiation, or to assent to any definite plan of settlement affecting Canada, without reporting the particulars of the same, and your own views thereon, to His Excellency in Council.

His Excellency has full and complete confidence in the justice and consideration of Her Majesty's Government, and he is sure that the interests and feelings of Canada will be consulted so far as is consistent with right and justice. The people of Canada desire nothing more.

His Excellency feels it particularly necessary that the importance of securing the north-west territory against the sudden and unauthorized influx of immigration from the United States' side, should be strongly pressed.

He fears that the continued vacancy of this great tract, with a boundary not marked on the soil itself, may lead to future loss and injury, both to England and Canada. He wishes you to urge the expediency of marking out the limits, and so protecting the frontier of the lands above Lake Superior, about the Red River, and thence to the Pacific, as effectually to secure them against violent seizure, or irregular settlement, until the advancing tide of emigrants from Canada and the United Kingdom may fairly flow into them, and occupy them as subjects of the Queen, on behalf of the British Empire.

With these objects in view, it is especially important that Her Majesty's Government should guard any renewal of a license of occupation (should such be determined on), or any recognition of rights in the Company, by such stipulations as will cause such license, or such rights, not to interfere with the fair and legitimate occupation of tracts adapted for settlement.

It is unnecessary, of course, to urge in any way the future importance of Vancouver's Island, as the key to all British North America, on the side of the Pacific, situated as it is, between the extensive seaboard of Russian America, and the vast territory in the hands of the United States. His Excellency cannot foresee the course which a Committee of the House of Commons may see fit to pursue in the proposed enquiry, or determine beforehand on what points evidence may be required. At any moment, however, His Excellency will be ready to attend to your suggestions, and supply such information, either by documentary evidence, or by witnesses from Canada, as you may think necessary, and he may be able to send over. You will, of course, act upon such further instructions in the premises as His Excellency may from time to time cause to be communicated to you.

I have, etc.,

E. A. Meredith,
Assistant Secretary.

The Hon. Mr. Chief Justice Draper, C.B., etc., etc.
Toronto.

MEMORANDUM OF THE HON. JOSEPH CAUCHON, COMMISSIONER OF CROWN LANDS, CANADA, 1857.*

The Commissioner of Crown Lands submits the following remarks on the North-West Territories of Canada, Hudson's Bay, the Indian Territories, and the Questions of Boundary and Jurisdiction connected therewith.

The question now under special consideration has more particular reference to the subject of the renewal of a Lease held by the Hudson's Bay Company for the "*Indian Territories*," which are not considered to be within the boundaries of Canada, though subject to Canadian jurisdiction.

But the Hudson's Bay Company's "Map and Statement of Rights," under their original Charter, as submitted to the Imperial Government in 1850, by Sir J. H. Pelly, the Chairman of the Company, has also, however, to be considered in connection with it.

It becomes necessary, therefore, to expose the fallacies of the "Statement of Rights and Map" referred to, in order that the rights of the Province may not be misunderstood or the pretensions of the Company taken for granted.

The rights of the Hudson's Bay Company, and the effect of their operations upon the interests of Canada, will best be considered under the following separate heads, viz. :

First—With respect to their operations under the original Charter on the territories affected thereby.

Second—With respect to their operations within the boundaries of this Province.

Third—With respect to their operations on what has been termed the Indian Territories, now under lease to them.

Fourth—Arising out of the foregoing, the more important question of the boundaries of the above Territorial Divisions ; and

Fifth—With respect to jurisdiction, as exercised, and as sanctioned by law.

Operations of the Company on their own Territories.

On the first head, as regards their operations under their Charter on the territories which, if valid, it would cover, it is a matter of very secondary importance to Canada. The territories of the Hudson's Bay Company, taken at the largest extent which any sound construction of their Charter in connection with international rights would warrant, if not in point of distance so very remote, are nevertheless so situated, that it can only be when all the localities to the south and west, more available for purposes of agriculture and settlement, have been filled to overflowing, that settlers may be gradually forced into that vicinity from the superabundant population of more favoured countries.

The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice there, would be rather of a moral and political than of an interested or commercial character. But as the necessities of the Company, in whose hands a monopoly of the trade has practically existed since the Treaty of Utrecht, together with the powers which they profess to derive from their Charter, has induced them to establish a jurisdiction which, for the moment, seems to have been successful in maintaining tranquillity and order, Canada has had no special reason to intervene, though if any complaints had been made on this score she would of course have felt called upon to exercise the powers vested in her by Imperial Statutes.

It is not, indeed, to be denied that the freedom of the trade, consisting of furs and fisheries, would be of advantage to this country ; but as this involves a question of the validity of the Charter, and whether or not, if valid in respect of the territory really affected by it, it would also affect the open sea of the Bay, and seeing that the question is not now raised of any further legislation to give effect to the powers it professes to confer, the consideration of this point is immaterial at the present moment, compared with the more important subjects that have to be treated of.

* Sess. Papers, Can., 1857, Vol. 15, No. 17.

Operations of the Company on Canadian Territories.

The second point to be taken into consideration, and which is of a more important nature, is that which affects the operations of the Company within the boundaries of Canada, and on this head it must be admitted that they have had every facility they could possibly enjoy in their own territories, if such exist; whether on the coasts of Labrador, Lakes Huron, Superior, or Winnipeg; whether on the Saguenay, the St. Maurice, the Ottawa, the Red River, the Assiniboine, or the Saskatchewan—wherever they have operated within the boundaries of Canada they have had precisely the same scope as within their own territories on the shores of Hudson's Bay; not indeed but what if opposition had sprung up, the same facilities must necessarily have been afforded to any rival traders, had they not been effectually protected from such rivalry by their unlimited means, their extensive ramifications and complete organization, with which no rival traders were able to compete, unless indeed to a very limited extent in the immediate vicinity of the settlements.

There are indeed parts of the Province so remote from established settlements, and having so little direct intercourse with them, that in former years it might have been to some extent a tax upon the country to have established tribunals sufficient to enforce the laws over regions inhabited only, with one exception, by the servants of the Company and the Indians, though it may now be reasonably questioned whether corresponding benefits would not have accrued from such a course, while it must be admitted that the Company have at all events reaped a profit, taking together the costs they have been put to from the want of legal tribunals and the monopoly of the trade which the non-organization of such tribunals has practically been the means of enabling them to enjoy.

The exception referred to, where a considerable settlement exists, besides the employees of the Company and the Indians, is the Red River Country.

But the time has passed when any considerations of expense, or temporary inconvenience, even if proved to exist, can be allowed to stand in the way of opening up those territories, when indeed the necessity for expansion compels the Provincial Government to create further facilities for it; and as an additional reason why the Government should no longer permit the present state of things to continue, it must be added that rumours have been gaining ground of late years, with a force and clearness which almost compel conviction, that the jurisdiction actually exercised in those remote localities has been as contrary to the wishes of the people as it has been manifestly without the sanction of law, all which has created a necessity for early investigation and action on the part of the Canadian Government.

With this view preparations were made in the Crown Lands Department last summer for a preliminary survey from the head of Lake Superior westward, preparatory to the opening of free grant roads, which have been so successful in other parts of the country, for the purpose of forming the nucleus of a settlement which would gradually penetrate to the valley of the Red River and the prairies beyond; besides which, a first-class thoroughfare would be necessary to afford easier means of communication with the navigable waters flowing to the west, etc., to facilitate the administration of justice in the distant settlements, and the necessary intercourse generally between those parts and the more populous districts of the country, and which would at the same time throw open to emigration, agriculture and commerce a far larger area, with at least an equal average mildness of climate, and susceptible of more rapid development (a known characteristic of prairie countries) than all other parts of the Province heretofore rendered available for settlement.

The question of the renewal of the license of exclusive trade for the Indian Territories does not, of course, affect the country above referred to, any more than it does the lands, whatever they be—for they have never been defined upon authority—which the original Charter of the Hudson's Bay Company may, upon investigation, be construed to cover.

Operations of the Company on the Indian Territories.

The third point is, for the moment, of less importance than the last, though within the period of another such lease as the Act 1 and 2 Geo. IV., cap 66, authorizes, it would

be impossible to calculate the immense influence it must have upon the future of this country, and the British institutions which have taken root so deeply and thrive so nobly on its soil. The present operations of the Hudson's Bay Company in these "Indian Territories" are conducted on the same principle precisely as within the boundaries of Canada, the jurisdiction they exercise having heretofore had the excuse of necessity, if not the sanction of law; and so far as it can be shown to have been exercised to the benefit of those countries, the Company might fairly claim indemnity for the consequences, should that become necessary, and there is no reason to doubt either the generosity or the justice of the Legislature if called upon to ratify such a measure.

It now becomes necessary, under the fourth head, to treat the questions of boundary arising out of the three foregoing; and these questions have, heretofore, been so little understood, that it will be necessary to enter into the subject at some length.

The difficulty of describing definite boundaries in countries which at the time were but very imperfectly or partially known, has always been a matter of serious embarrassment. In the present instance, however, the difficulties can only be in matters of detail, and it may be safely assumed that they will be still further lessened by the fact, that wherever uncertainty can be supposed to prevail in any point of real importance, it can only be between the Province of Canada on the one hand, and the "Indian Territories" on the other (not between Canada and the Territories of the Hudson's Bay Company, unless at a point of comparatively little consequence); and it would be difficult to conceive that it could be adverse to the interests of the Crown or the community, if the principal question of boundary were sunk altogether, and the whole of the "Indian Territories" incorporated with this Province.

Boundary of the Company's Territories under Charter of 1670.

In the first place, then, with respect to the Territory affected by the Charter of the Hudson's Bay Company, it may be admitted that it would not only be difficult but absolutely impossible to define it; it is therefore fortunate that its limited extent renders the question of little importance further than that it becomes necessary to consider and rebut the very large pretensions of the Company.

The extent of the territory affected by the Charter is subject to two distinct conditions:

First—It is confined to all such territory as was then the property of the donor.

Second—It is confined to all such unknown territories as by the discoveries of the Company, his subjects, might become his property.

These distinctions, though not directly expressed, are nevertheless conditions resulting from the circumstances and necessary to a proper understanding of the case.

With respect to the first, viz., the territory which was the property of the donor, it is necessarily limited by usage and by common sense to what was known or discovered, for the unknown and undiscovered could not be his property, and might never become his property, that being dependent upon circumstances then in the future: it is further limited by specific condition, expressed in the Charter itself, to such portions of what was then known as did not belong to any other Christian Prince or State, which condition, it must be admitted, was an acknowledgment on the part of the donor that some part of the territory he was describing was not his, and of doubt as to what did or did not belong to him.

With respect to the extent of territory that *might have been* affected by the second condition above stated (that is, as regards exclusive trade, the grant of soil being less extensive and more ambiguous), it has no particular limit, for it embraces all countries which could be reached either by "water or land" through Hudson's Straits, and to limit or extend it merely to the sources of rivers discharging into Hudson's Bay would be a construction which the Charter will in no sense admit of. But while it extends to all unknown countries or infidel nations, which the Company could reach through Hudson's Straits or Bay, it is at the same time inferentially and *necessarily* restricted from extending to any of those unknown parts which might be first discovered and possessed by the subjects of any other Christian Prince or State. This is not, indeed, expressed in the

Charter in relation to undiscovered territories, but it is emphatically so as regards the then state of the rights and possessions of Christian Powers. While the King, therefore, is so careful, at least in the wording of the document, not to infringe upon the rights of others *already acquired*, it can scarcely be supposed that he meant to infringe upon the rights of others *to acquire* what then belonged to none. The inference is altogether against the supposition that King Charles meant by his Charter to deny the right of any other civilized nation to make further discoveries and appropriate the countries discovered, and even if he had so intended it, he had not the power to alter the law of nations in this respect. Besides, the Charter is expressly one of discovery as well as trade, etc.; the advantages granted to the "adventurers" are incidental and subordinate to that greater object, but there could be no *discovery* on their part wherever they were preceded by prior discovery and possession on the part of the subjects of any other Christian Prince. The right of discovery is and was so well established, and wherever considered of any importance, has been so jealously watched that volumes of diplomatic controversy have been written on single cases of dispute, and the King of Great Britain could not by his Charter annul the recognized law of nations, or limit in any degree the right of other States to discover and possess countries then unknown. It may even be considered extravagant to affirm that he could convey a right of property to territories *not then*, but which might *afterwards become* his or his successors' by the prior discovery and possession of the Company themselves, his subjects: were it necessary to dwell upon this point, it could easily be shown that most of the territories now claimed under the Charter which were not discovered at that date, the Company were not afterwards the first nor were any other British subjects the first discoverers of; that, in fact, except the Coppermine River, the Company never discovered anything or penetrated beyond the *Coasts and Confines* of the Bay (to which perhaps they at that time justly considered their rights restricted) for upwards of a hundred years after the date of their Charter, and that when they did so penetrate, the only *discovery* they made was that the whole country in the interior had been long in the peaceful possession of the subjects of another Christian Prince.

But the position as regards discovery after the date of the Charter, it is unnecessary to dwell upon, particularly as an adverse title can be proved prior to the date of the Charter, and that too sanctioned by treaty.

The early discovery and occupation of the country in and about Hudson's Bay are, as in many other cases, shrouded in a good deal of obscurity. The British claim as the first discoverers of the whole coast of this part of North America, in the persons of John and Sebastian Cabot, about the year 1497; but it is contended on the other hand that their discoveries did not extend to the north of Newfoundland, which still retains the name they gave it, and which they supposed to form part of the main land. It is *said*, indeed, that the Cabots penetrated to a very high latitude far to the north of the Straits now bearing the name of Hudson; but it must be remarked that there appear to be no authentic records of the two voyages of the Cabots, their journals or observations. There appears to be only *hearsay* evidence of what they did, or where they went, told afterwards at second-hand to third parties. The voyages of the Cabots, therefore, although they are matters of history, not admitting of any reasonable doubt, in a general way, as to their having reached the coast of America, lose much of their force as the bases of specific territorial claims, from the want of any record of their proceedings. Did they ever land? If so, where? What observations did they make? Did they take formal possession? etc.

The French claim through fishermen of Brittany, who established fisheries on the coast as early as 1504, and through a map published by Jean Deny, of Honfleur, in 1506. The map would be valuable if any authentic copy of it be extant. There does not appear to be any such record of the operations of the Breton fishermen as would fix precisely the spot where their trade was carried on, though a British geographical work, published in 1671, with a map attached, fixes it at Hudson's Straits, naming the country after them, on the south side of the Straits and within the Bay. The next navigator through whom the French claim is maintained is John Verezzani, who visited the country by order of Francis the First of France, in 1523-4. This is the first voyage, in

Ogilby, London, 1671.

behalf of either France or England, of which any authentic and circumstantial record exists, as written by the navigator himself, who gave the country the name of New France. In 1534 Jacques Cartier's discoveries commenced, and these are so well known that it is unnecessary to say more of them.

Thus, then, it appears that the Cabots' voyages, unsustained by any authentic record, affording no means of basing even a probable surmise as to whether so much as a landing was effected, formal possession taken, or any act done to constitute the assumption of sovereignty or of territorial dominion, comprise the only grounds on which England can base a claim to the country north of Newfoundland, prior to the voyage of Jacques Cartier. Apart, therefore, from the question of "*beneficial interests*" (to use the expression of a British diplomatist) which were acquired by France, commencing with the discoveries of Cartier, the preponderance of *admissible* evidence is altogether in favour of French discovery of that part of the continent between Newfoundland and Hudson's Bay. But even if the question rested altogether between the unauthenticated discoveries of the Cabots and the commencement of settlement by Cartier, it would not be inappropriate to assume the British view of a similar question as maintained in the Oregon dispute, in the following words:—

"In the next place, it is a circumstance not to be lost sight of, that it (the discovery by Gray) was not for several years followed up by any act which could give it value in a national point of view; *it was not in truth made known to the world either by the discoverer himself or by his Government.*"

The next English attempts at discovery commenced in 1553, when Willoughby penetrated to the north of Hudson's Bay, which, however, he did not discover or enter. This was nineteen years after Jacques Cartier's first voyage, and was followed by various other attempts at finding a north-west passage, all apparently directed to the north of Hudson's Straits until 1610, the period of Hudson's voyage, in which he perished after wintering in the Bay which bears his name: but by this time it must be observed that Canada was colonized by the French.

In 1540 De Roberval was made Viceroy of Canada, the description of which as given in his commission included Hudson's Bay, though not then of course known by that name.

L'Escarbot gives a full description of Canada at the period of De La Roche's appointment in 1598 as follows:—

"Ainsi notre-Nouvelle France a pour limites du côté d'ouest les terres jusqu' à la mer dite Pacifique au deça du tropique du cancer; au midi les iles de la mer Atlantique du côté de Cuba et l'Ile Espagnole; au levant la mer du nord, qui baigne la Nouvelle France; et au Septentrion cette terre, que est dite inconnue, vers la mer glacée jusqu' au Pole Arctique."*

Notwithstanding failures and difficulties, France continued the effort to colonize Canada, and in 1598 De La Roche was appointed Governor of the whole of Canada as above described; in 1603 or 1604 the first exclusive Charter was granted for the fur trade of Canada up to the 54° of north latitude; in 1608 Champlain founded the City of Quebec; and in 1613 he accompanied his Indian allies, to the number of between two and three thousand, up the Ottawa and by Lake Nipissing and the French River, to war with a hostile nation at the Sault Ste. Marie. It must now be observed that the great incentive to the colonization of Canada was the enormous profits of the fur trade, without which it is scarcely likely that such persevering efforts would have been made for that purpose while so many countries with more genial climates remained in a manner unappropriated.

Tadousac, at the mouth of the Saguenay River, was the first important post established by the French on the St. Lawrence; it was the entrepôt of the fur trade before Quebec was founded, and continued to be so afterwards. This will not be deemed extra-

* Therefore New France has for boundaries on the west the Pacific Ocean within the Tropic of Cancer; on the south the Islands of the Atlantic towards Cuba and Hispanolia; on the east the Northern Sea, which washes its shores, embracing on the north the lands called Unknown, towards the Frozen Sea, up to the Arctic Pole.

ordinary when it is considered that the Saguenay River afforded the best means of access into the interior, and was the best inland route, in fact is the best canoe route yet, to the Great Bay now bearing the name of Hudson. There is indeed no authentic record of any of the French having made an overland journey to the Bay at so early a period, but when it is considered at what an early date the *Coureurs des Bois* traversed the whole country in search of peltries, how readily they amalgamated with the Indians, who in that locality were in friendly alliance with them, and when it is also considered what extra-ordinary journeys the Indians undertook, as instanced by the war carried into the enemy's country at the Sault Ste. Marie, already referred to, the presumption is that the fur traders of Tadousac not only enjoyed the trade of the Great Bay, but must also have penetrated very far in that direction, if not to the Bay itself, a journey at the most of less distance and not greater difficulty than that which Champlain successfully accomplished with an army, while it had the strong incentive of profit to stimulate it. It is not necessary, however, to prove that every corner of the country known to the world as New France or Canada had been first visited by the actual possessors of the region so known.

However strong the probabilities, therefore, of the *Coureurs des Bois* having been in communication with the great northern Bay before the visit of Hudson in 1610, or of Button, who succeeded him in 1612, it is not necessary to base any argument thereon; nor is it necessary to dwell on the reputed voyage of Jean Alphonse, of Saintonge, in 1545, which, although quoted by French historians, does not appear to be sufficiently authenticated. For, granting that the rights accruing from discovery resulted from the voyages of Hudson and Button, these discoveries were practically abandoned, in fact were never dreamt of being followed up by way of occupation, the finding of a north-west passage having been their sole object; but waiving even this point, it will be found that the rights of France were made good by international treaty long before the Charter of Charles the Second was granted.

It will be seen from L'Escarbot's description, and those contained in the commissions of the Governors already referred to, that France claimed the whole conntry extending to the north of Hudson's Bay, her title resting in the first instance upon the discoveries already mentioned, of which those of Verezzani, Cartier, and Champlain are of unquestioned authenticity, to which they had added, when L'Escarbot wrote, in 1611, the title resulting from actual possession in the shape of permanent settlement. England, on the other hand, claiming under Cabot's discovery, denied the right of France generally to the whole, and practically to the more southerly parts, where she endeavoured to plant settlements of her own, in which she was successful at a period somewhat later than the French. The fact is, each was trying to grasp more than they could take actual possession of; and if mere discovery of parts of a continent without actual possession or settlement were made the basis of permanent rights, neither of the contending parties would perhaps have had any right at all. Gradually the state of the actual possessions of the two Powers settled down into a sort of intelligible shape, though without any very distinct boundaries, the most northerly of the English possessions being known as New England, and *all* the country to the north thereof being known as New France or Canada, where the French *only* were in possession, there being no possession or settlement of any kind to the north of them. Still, had England colonized Hudson's Bay at that period and been suceessful in keeping actual possession of it, she would just have had the same right to do so that she had to colonize New England. That England persevered with extra-ordinary energy in trying to find a north-west passage there can be no doubt, nor does it appear that France, though publicly claiming the country, made any objection; but neither country made the most distant attempt at settlement or actual occupation of those remote and inhospitable regions at that period.

In 1615 another expedition was made into Hudson's Bay, in search of a north-west passage, by Baffin and Bylot. In 1627 the Quebec Fur Company was formed under the auspices of Cardinal Richelieu, and an exclusive Charter granted to them for the whole of New France or Canada, described as extending to the Arctic Circle. In 1629 Quebec was taken by the British, as were also most of the other principal towns founded by the French, in Acadia and Nurembega (now Nova Scotia and New Brunswick), which were

then Provinces of New France, the two nations being then at war. In 1631 Fox and James, on two different expeditions, prosecuted a further search for a north-west passage in Hudson's Bay, and from the latter of these navigators the southerly portion of the Bay takes its name.

At this period the authenticated voyages of the English into Hudson's Bay were Hudson in 1610, Button in 1612, Bylot and Baffin in 1615, and Fox and James in 1631; the numerous other expeditions having been apparently directed to the north of Hudson's Straits. At the same time, the extent of New France or Canada, as claimed by the French, was publicly known throughout the civilized nations of Europe. It is not necessary to say that that claim was admitted by Great Britain; it is sufficient that it was known. British authorities even of a later period, it must be observed, have contended that the French were intruders in America altogether in violation of the title accrued through the discoveries of the Cabots, and had no right whatever to any part of it *until acquired by treaty.* It therefore becomes immaterial whether the claims of the French were disputed or not, so far as they were afterwards confirmed or a title created by Treaty.

In 1632 peace was concluded, and by the Treaty of St. Germain-en-Laye, Canada or New France was relinquished to the French without any particular designation of its limits, and the British forces were to be withdrawn from the places they had taken, which being the most important, including the seat of Government, might almost be said to have amounted to the conquest of the whole country.

Admitting, then, that but a disputed title of discovery had previously existed on either part—nay, admitting more, that the right vested by prior discovery was in England, this Treaty sets the matter at rest as regards all that was at that time called by the name of New France or Canada. There is indeed no getting behind this Treaty, of which the Charter afterwards granted by Charles the Second was in fact, but for the saving clause it contains, a violation, and Canada might well be content to rest her case here as against a Charter, which, referring to a country previously guaranteed by the Treaty to a foreign power, is expressly conditioned (as a Charter of discovery) not to interfere with what belonged to that other power. If, as is asserted by some English writers, France had no rights in America but such as she acquired by Treaty, what, it may be asked, were the limits of the Territory she acquired by the Treaty of St. Germain-en-Laye, if not all that she claimed under the name of New France? It must be observed, too, that Champlain, the Viceroy of Canada, was made prisoner when Quebec was taken in 1629, and carried to England, where he remained for some time, and that the very year in which the Treaty was entered into, he published a work, containing a map of New France, by which Hudson's Bay was included in the country so called. Can it then for a moment be supposed, with Champlain, the Viceroy of New France, a prisoner in their hands, and their flag floating in triumph from the battlements of its capital, that the British Government and the diplomatists who negotiated the Treaty were ignorant of the meaning attached to the terms "Canada" or "New France," or could attach any other meaning to those terms than that which Champlain's published maps of a previous date indicated, and with which the descriptions of other French writers, whose works were known throughout Europe, coincided? Can it be supposed that in the negotiations preceding the Treaty, Champlain's views of the extent or boundaries of his Viceroyalty were wholly unknown, or that the British diplomatists meant something less by the appellation than what was known to be understood by France? If, indeed, something less than the known extent of country called New France had been agreed upon, some explanation would undoubtedly have been contained in the Treaty, or if there had been any misunderstanding on the subject, the map which issued the same year, in Champlain's work of 1632, would at once have been made a cause of remonstrance, for, coming from the Chief Officer of the Colony, who was re-appointed to or continued in his office after the Peace, and published in Paris under the auspices of the King, it could not be otherwise looked upon than as an official declaration of the sense in which France regarded the Treaty.

Even, then, if the rights of France were wholly dependent upon international Treaties, her right became as good by the Treaty of St. Germain-en-Laye to the shores of Hudson's Bay as to the shores of the St. Lawrence. If she had rights before, the Treaty confirmed

them ; and if she had no rights before, the Treaty created them ; and in either case, the effect was as great in the one locality as the other. Every further step, however, in the history of the country will only tend to show that even if there had been no such Treaty as that of St. Germain-en-Laye, the Charter could not be sustained in opposition to the rights of France.

The provisions of the Treaty of 1632 seem to have been respected for a period of thirty-six years, when, in 1668, the next English expedition entered the Bay, which was the first *trading voyage* ever made by British subjects to the Bay, and which resulted in the formation of the Hudson's Bay Company and the grant of the Charter two years after. In saying that this was the first purely commercial enterprise of the British in Hudson's Bay, it is not meant to be implied that no trade was had with the Indians by those engaged on the former expeditions, but that such enterprises were undertaken with the definite object of reaching the Pacific, and without the least idea of any practical occupation of, or trade with the country.

The British having ceased any attempt upon Hudson's Bay from the time of Fox and James' voyages and the Treaty of St. Germain-en-Laye, for a period of thirty-six years, it now remains to be seen what the character of this their next attempt was, and what had been the circumstances of the country in the interim.

That the name of Canada or New France continued to attach to the whole country during that period is indisputable ; the French published maps of these times leave no doubt upon the subject ; and when we find the French not only designating the country by these names in their maps published by royal authority, but also entering upon the practical occupation of the since disputed parts of the country so designated, the carrying on of the trade with it both by sea and land, and the establishing of missions, all within the period intervening between the Treaty of St. Germain-en-Laye and the granting of the Charter, or the voyage which preceded the Charter, and all without interference on the part of Great Britain, we must conclude that the rights of the French were incontestable, and that if ever an adverse claim had been preferred, it was considered to have been abrogated by the Treaty.

In 1656 the first exclusively commercial sea voyage was made into Hudson's Bay by Jean Bourdon, who found the trade in furs so profitable that others immediately followed. The first missionary establishment was made there in 1663 by La Couture, who went overland by direction of D'Avaugour, Governor of Canada, who had been twice solicited by deputations of Indians from the Bay to send them missionaries ; and now the French being fully established in the trade and in the occupation of the country both by sea and land, of the coast and of the interior, the English "Adventurers" first appear upon the scene, in a business way, under the countenance of two Canadians, De Grozelier and Radisson, who having been already engaged in the trade of the Bay, and having failed in procuring certain privileges they desired from their own Government, went to England and induced some Englishmen to join them in a trading voyage in 1668, which was so successful that, as already stated, it resulted in the formation of a Company, and the grant in 1670 of one of those extraordinary Charters which were so much in vogue in those days that the whole of the Continent of America, north of the Gulf of Mexico, known and unknown, may be said to have been covered by them, and some of it doubly so, if the vague and ambiguous descriptions, of which this was the most vague, could be said to mean anything.

This was the origin of the Hudson's Bay Company, and they immediately commenced to build forts and establish themselves in the trade, but no sooner was this known in France than orders were given to expel them. Accordingly a desultory warfare was kept up for a number of years between the Canadian traders and the Company, in which the latter were nearly expelled, but again recovered themselves and strengthened their position, when it became necessary to take more effective means for their expulsion. Troops were accordingly despatched from Quebec overland for that purpose, under the Chevalier de Troyes, who commenced his work very effectually by taking the principal Forts of the Company. It must be observed that this was in 1686, in time of peace between Great Britain and France, and yet these proceedings were not made a

cause of war, which in itself would strongly imply an admitted right on the part of France to extirpate the Company as trespassers upon her territory.

War having afterwards broken out, the Forts on Hudson's Bay were successively taken and retaken till the Peace of Ryswick, in 1697, put a stop to hostilities, at which time the British appear to have been possessed of Fort Albany *only*, the Canadians having possession of all the other establishments and the trade of the Bay.

By the Treaty of Ryswick, Great Britain and France were respectively to deliver up to each other generally whatever possessions either held before the outbreak of the war, and it was specially provided that this should be applicable to the places in Hudson's Bay taken by the French during the peace which preceded the war, which, though retaken by the British during the war, were to be given up to the French. There could scarcely be a stronger acknowledgment of the right of France to expel the Company as trespassers upon her soil, for it is impossible to construe the Treaty in this particular otherwise than as a justification of the act.

Moreover, commissioners were to be appointed in pursuance of the Treaty to determine the rights and pretensions which either nation had to the places in Hudson's Bay. Had these commissioners ever met, of which there appears to be no record, there might have been a decision that would have set the question at rest as to which were "*rights*" and which were "*pretensions.*" The commissioners must, however, have been bound by the text of the Treaty wherever it was explicit. They *might* have decided that France had a right to the whole, but they could *not* have decided that Great Britain had a right to the whole. They would have been compelled to make over to France all the places she took during the peace which preceded the war, for in that the Treaty left them no discretion. The following are the words of the Treaty :—"But the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article." Thus the Treaty of Ryswick recognized and confirmed the right of France to certain places in Hudson's Bay distinctly and definitely, but it recognized no right at all on the part of Great Britain; it merely provided a tribunal to try whether she had any or not.

So strongly has the Treaty of Ryswick been interpreted in favour of France in this particular, that some historians merely state the fact, that by it she retained all Hudson's Bay, and the places of which she was in possession at the beginning of the war.

The commissioners having apparently never met to try the question of right, things remained *in statu quo*, and the most reliable accounts show that the Hudson's Bay Company retained possession of Fort Albany *only* from that time up to the Treaty of Utrecht, in 1713. Now, whatever the commissioners might have done, had they ever passed judgment on the cause the Treaty provided they should try, they could not have given Fort Albany to the British, for it was one of the places taken by the French during the preceding peace, and retaken by the British during the war, and therefore adjudged in direct terms of the Treaty itself to belong to France.

Thus then it will be seen, that the only possession held by the Hudson's Bay Company during the sixteen years that intervened between the Treaty of Ryswick and the Treaty of Utrecht was one to which they had no right, and which the obligations of the Treaty required should be given up to France.

Here, therefore, for the second time an International Treaty interposes a barrier against the pretensions of the Company.

By the Treaty of Utrecht, in 1713, the whole of Hudson's Bay was ceded to Great Britain without any distinct definition of boundaries, for the determining of which commissioners were to be appointed. No official statement of the action of such commissioners is at present available for reference,* but it is stated that no such action threw any additional light upon the subject. Indeed no such commissions ever have done much to determine boundaries in unexplored countries, as witness, for instance, the dispute so long pending on what was called the North-Eastern boundary question between

* [It has since appeared on official authority that no boundary was settled by the commissioners.—G. E. L.]

Great Britain and the United States, which was finally compromised by the Treaty of Washington, concluded by Lord Ashburton; and again, the difficulties arising out of the same ambiguous description, and which so many commissions endeavoured in vain to settle, between the Provinces of Canada and New Brunswick.

There is no denying the fact that the ancient boundaries of Canada or New France were circumscribed by the Treaty of Utrecht, and it is difficult to determine precisely the new boundaries assigned to it The general interpretation adopted by the British geographers, as the country gradually became better known from that time up to the final cession of Canada, was that the boundary ran along the high lands separating the waters that discharged into the St. Lawrence from those that discharge into Hudson's Bay to the sources of the Nipigon River, and thence along the northerly division of the same range of high lands dividing the waters flowing direct to Hudson's Bay, from those flowing into Lake Winnipeg, and crossing the Nelson, or rather (as it was then known) the Bourbon River, about midway between the said Lake and Bay, thence passing to the west and north by the sources of Churchill River, etc.; no westerly boundary being anywhere assigned to Canada. It may indeed be held doubtful whether the terms in which Hudson's Bay was ceded could possibly be interpreted to mean more than the Bay and its immediate environs, but whatever the legitimate interpretation of the Treaty, the actual *acceptation* of it gave to France *at least* all to the south of the dividing high lands above described, for she remained in undisputed possession thereof until the final cession of Canada in 1763; while on the other hand the acceptation of it on the part of Great Britain, as proved by the same test of occupation, confined her at least to the north of the said high lands, if not to the very shore of the Bay, beyond which her actual posession never extended.

It must here be observed, however, that the Treaty of Utrecht conferred nothing upon the *Hudson's Bay Company*. It gave them nothing that was not theirs at the Treaty of Ryswick, and the Treaty of Ryswick gave them nothing that was not theirs before. The Charter obtained from King Charles the Second may have granted all that was his (if anything) to grant in 1670, but it would have required a new Charter to have granted what France ceded to Great Britain forty-three years afterwards. No doubt the Treaty of Utrecht had this important bearing upon the Company, that although it conferred no territorial rights upon them, the territory it conferred on Great Britain was then inaccessible to British subjects by any other route than through the Bay and Straits of Hudson, over which (if over anything) the Company's Charter gave exclusive control, and over which, whether rightfully or wrongfully, they have exercised such control.

Matters continued in this state as regards the territorial rights of Great Britain and France for fifty years more, when Canada was ceded to Great Britain by the Treaty of Paris in 1763. During this period the Hudson's Bay Company occupied the posts on the coasts of the Bay, *and these only*, having made no attempt to penetrate into the interior or occupy even what the *British geographers* of the time construed the Treaty of Utrecht as conferring, not upon the Company, but upon Great Britain: while on the other hand the French had covered that part of New France which still remained to them (according to the British authorities*) with posts or forts from the Lake of the Woods to the lower end of Lake Winnipeg, and remained in peaceable possession thereof, and in the most active prosecution of the trade until the whole country was given up to the British by the Peace of Paris, in 1763; by which, however, nothing was conferred upon the Hudson's Bay Company any more than there had been by the Treaty of Utrecht, the rights acquired by these treaties being simply in common with other British subjects.

For a few years, about the time of the transfer of Canada from French to British dominion, the trade of the western territories languished from a very natural want of confidence on the part of the Canadians by whom it had, up to that time, been carried on, and who now owed a new allegiance and had to seek a new market for the produce of their industry; but a fresh impulse was soon given to it, first by separate individuals, then by small companies, and finally by the great North-West Company of Montreal,

* [Jefferys (a British authority subsequently quoted in this paper) mentions, in addition to the posts here referred to, two of the French posts on the Saskatchewan.—G. E. L.]

who not only spread their operations over all the territories formerly possessed by the French, but explored new countries to the north and west, while the Hudson's Bay Company had not yet made a single establishment beyond the immediate confines of the sea coast.

The temporary depression of the fur trade at the period of the transfer of Canada to British dominion was, of course, advantageous to the Hudson's Bay Company, for the Indians inhabiting those parts of Canada where the French posts were established around Lake Winnipeg and its tributaries, would naturally seek a market in Hudson's Bay during the comparative cessation of demand at the establishments in their midst. But when confidence was restored, and a new impulse was given to the trade in the north-west of Canada, the supply was again cut off from Hudson's Bay, and now the Company *for the first time* entered into competition with the Canadian traders *in the interior*, where their first establishment was made in 1774. And why, it may be asked, did not the Hudson's Bay Company oppose the French Canadians in the interior a few years earlier, as well as they opposed them (principally the same people) now that they had become British subjects? The answer is very simple. During French dominion they could not do it because the country belonged to France, but by the cession of the country to Great Britain, the Company had acquired the same right as any other British subjects to trade in it, and they availed themselves of that right accordingly.

From this period an active competition was carried on between these companies, but the Canadian North-West Company were everywhere in advance of their rivals. They were the first to spread themselves beyond the limits of the French, over the prairies of the Saskatchewan ;* they were the first to discover the great river of the north, now bearing the name of McKenzie, and pursue its course to its discharge in the Frozen Ocean ; they were the first to penetrate the passes of the Northern Cordilleras and plant their posts upon the shores of the Pacific ; and with such indomitable energy did they carry on their business, that, at the period of Lord Selkirk's interference, they had upwards of 300 Canadians, " *Voyageurs,*" employed in carrying on their trade to the west of the Rocky Mountains.

It would be a useless task now to enter into a detail of the attempt made by the Earl of Selkirk, as a partner of the Hudson's Bay Company, to ruin their opponents. It is only necessary to refer to it here as the first endeavour made to exercise the privileges contended for under the Charter over those territories which had not been acquired by Great Britain till the conquest or cession of Canada. Lord Selkirk having become principal partner, and acquired a predominant influence in the affairs of the Hudson's Bay Company, it was determined to assert the assumed privileges of the Company to an extent never before attempted ; and for this purpose a grant of the country on the Red River was made to his lordship, who commenced in 1811–12 to plant a colony there.† A Governor was appointed, the colonists and the servants of the Company were armed and drilled, and in 1814 the claims of the Company to soil, jurisdiction and exclusive trade were openly asserted, and for the first time attempted to be enforced by the actual expulsion of the North-West Company, several of whose forts were surprised and taken, their people being made prisoners, their goods seized, and the channel of their trade obstructed by the interception of their supplies. Overawed somewhat for the moment by this bold assumption of authority, the Canadian Company appear to have avoided the contest, but when forced into it they proved the stronger ; the Governor was killed in leading an attack upon a party of the North-West Company, who turned and gave battle, and the colony was dispersed. This final catastrophe occurred in the spring of 1816, while in the meantime Lord Selkirk was organizing a more formidable force than had

* [It is now historically established that the French, before the cession of Canada, occupied the whole country of the Saskatchewan. They had several forts on that river; one of them at its source in the Rocky Mountains.—G. E. L.]

† "Who have been the aggressors in their different quarrels, I am not able to determine ; however, previous to 1811, at which time Lord Selkirk became connected with the Company trading to Hudson's Bay, and sent settlers from Europe to that country, no great differences existed between the servants of that Company and the fur traders of Canada. There might be difficulties between different posts, but seldom attended with serious consequences."—Despatch of Lieutenant-Governor Gore to Earl Bathurst, 9th September, 1816.

hitherto taken the field. Having procured a commission of the peace from the Government of Canada, he engaged a large force of the disbanded DeMeuron soldiers, equipped them in military style, procured arms, ammunition, artillery even, and started for the interior.

It must be allowed that it was a somewhat anomalous course for the Government of Canada to have pursued, to permit such a force to be organized; but when it is considered that great ignorance prevailed as to the state of those remote localities, that it was known that there had been disturbances and bloodshed the previous year; when also Lord Selkirk's position is considered, and that he went as a pacificator professedly to maintain peace, it may not be deemed so extraordinary that so much confidence should have been placed in him, for he was even granted a sergeant's guard of regular troops. It is not the object here, however, to enter into a discussion of the unfortunate occurrences of that period, or the particular action of the Provincial Government, and the circumstances are only referred to, to show that Canada actually exercised the jurisdiction, that Lord Selkirk's destination was the Red River Colony, and that he deemed it necessary to fortify himself doubly with commissions as a Canadian magistrate, first for Canadian territory, and second (under 43 Geo. 3rd) for the "*Indian territories*," so that those who resisted his authority on the ground that they were in Canada, he could judge under the one commission, and those who resisted on the ground that they were in the Indian territories, he could judge under the other, while the judicial and governmental attributes claimed for the Company would have served as a third basis of operation; and thus with the actual force at his disposal there was a pretty fair prospect of the Hudson's Bay Company being made the absolute masters of the north-west country.

At the Sault Ste. Marie, however, Lord Selkirk met intelligence of the death of Governor Semple and the dispersion of his colony; nevertheless, he still proceeded with his force as far as Fort William, on Lake Superior, where he arrived about the 11th of August, 1816, and soon after arrested the partners of the North-West Company, who were there at the time, and took possession of the whole establishment, including the merchandise and stores of the Company. The course pursued on this occasion, as appears by documents published at the time, shows the character of the pretensions set up at that period—pretentions which were then and not till then presumed upon.

It will be observed that Fort William was the principal depot of the Canadian merchants, through which all their supplies for, and peltries from, the North-West had to pass. By seizing on this point, therefore, Lord Selkirk had possession of the key of their whole trade, and was enabled to permit or refuse the transit of their goods as he saw fit. For whatever purpose, therefore, he obtained his two commissions of the peace in Canada, the expedition simply resolved itself into a continuation of the attempt to destroy the North-West Company of Canada, the rivals in trade of the Hudson's Bay Company; for, however desirable it might be to arrest and bring to trial all parties implicated on either side in the death of Governor Semple, there could be no excuse for seizing the persons of those gentlemen who were known not to have been at the time within hundreds of miles of the scene of that catastrophe, merely because they were partners in the North-West Company, nor, even if there were cause for their arrest, did that justify the taking possession of their property without the sanction or the form of law.*

The object of entering upon this brief record is, to point out that all this occurred at *Fort William*, on the shores of Lake Superior, within what the Hudson's Bay Company, by their map and statement of "rights," now admit to be within the boundaries of Canada. And thus it will be seen that, while the pretension of extending the privileges of the Charter beyond the "coasts and confines" of the Bay to the western territories of Canada was a mere invention of that period, to further their own ends and to destroy the rival Company of Canada, they were as ready to employ force at Fort William as in the Valley of the Red River.

In further proof that the transactions at Fort William were openly done in violation

* "From these Documents it appears, that the Earl of Selkirk, acting in his own cause, aided by an armed force, has not only made the Partners of the North-West Company prisoners, but has also seized their Papers and Property."—Lieut.-Gov. Gore to Earl Bathurst, 9th Sept., 1816.

of Canadian law and in defiance of Canadian authority, it is only necessary to add that when Lord Selkirk's proceedings became known, warrants were issued for his apprehension and a party of constables sent to arrest him, and that refusing obedience to the laws of this country, and presuming upon the force for the moment at his command in that remote locality (remote *then* as regards the *time* it took to reach it, though at our doors to-day), he caused the constables to be taken prisoners themselves, and treated the Deputy Sheriff of the Western District, who afterwards made the attempt, in like manner.

This war between the Companies, though injurious to both, failed to exterminate either, and the final result was a compromise by which they entered into partnership; and thus the trade has been carried on since, under the name indeed of the Hudson's Bay Company, but *expressly* in conjunction with the North-West Company of Canada, so that Canada can at no time be said to have been out of possession of her western territories within the limits occupied by the French at the time of the conquest, nor out of possession of the "Indian Territories" beyond, which, after the conquest, were first discovered by the Canadian traders, and for which the License of exclusive trade was granted to the Partners of the North-West Company of Canada, as such, in conjunction with the Hudson's Bay Company.

It is true that after the amalgamation of the Companies and the License of exclusive trade granted in 1821, competition became *illegal* in the "*Indian Territories*" beyond the boundaries of Canada, as indeed it had always proved *impracticable* on the part of minor traders either within or beyond the remote parts of the province, small traders being altogether unable to cope with the two great Companies. It is true also that after they, the two great Companies, had been for some time united, and when by the policy pursued by them the trade had ceased to be beneficial to, and had been lost sight of in, Canada, an arrangement was effected between the two sections of the United Company by which the name of the North-West Company was dropped entirely, the lease relinquished, and a new one obtained in which the name of the Hudson's Bay Company alone appeared; but it must be observed that this new arrangement was accepted and entered into by the British Government by consent of the partners representing the original Canadian Company, for although this Lease or License only affects the Indian Territories beyond the actual boundaries of Canada, it can scarcely be supposed that the Government would have agreed to give it, had Canadian traders still remained in the field. The policy of the Companies when joined, has however been so far successful that they have managed heretofore to secure themselves against opposition, many no doubt being imposed upon by the pretentious but erroneous construction put upon their Charter, and the public in general kept in the dark respecting a trade which, though partly carried on in the very centre of Canada and within range of steam navigation, is so managed as to pass by a circuitous route, by means of the primitive canoe and over portages on men's backs, away hundreds of miles into the interior and round by Hudson's Bay.

But the time has come when Canada must assert her rights, not only from that necessity for expansion which her growing population and trade require, but also because if she does not now begin to provide for the future by opening up her remote territories to colonization, and securing the loyalty and attachment of the people by extending to them the rights and privileges of her laws and institutions, there is a moral certainty that a power far more formidable than the Hudson's Bay Company must in a very short period acquire the actual possession of those countries.

This brief chronological sketch of the history of the Company and of the circumstances connected therewith, must sufficiently show that they have acquired no territorial grant whatever under either of the two conditions stated, to which their Charter was subject; first as regards the countries then known upon the "coasts and confines" of Hudson's Bay, because they were already in the possession of the subjects of another Christian Prince, and were therefore excluded from the grant in terms of the Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, 104 years after the date of their Charter, they found the country and a long-established trade in the hands of others—unless indeed as regards some discoveries to the north, which are of no special importance to Canada, such as the Copper Mine River, discovered by Hearne under the auspices of the Company.

Under the first head the most sanguine advocate of the Company, upon a full investigation of all the circumstances, could only urge on their behalf a claim to certain points, or stations, on the sea coasts of the bay, and even to these a doubtful and disputed title.

The high legal authorities that may be quoted in favour of the claims of the Company cannot be held as of weight against the conclusions inevitably resulting from a fuller investigation of the subject, inasmuch as they are merely opinions *upon the cases submitted.* The latest opinion given upon the subject is that of Sir John Jervis and Sir John Romilly in their letter to Earl Grey, of January, 1850, in which they gave it as their opinion, "That the rights claimed by the Company do properly belong to them." Before arriving at this conclusion, however, these learned gentlemen are careful to specify precisely what papers they had then under consideration, and to which alone they refer as the basis of their opinion. These papers were simply the "*Statement of Rights and the Map,*" submitted by the chairman of the Company, Sir J. H. Pelly.

This opinion, therefore, can only be taken as affirmative of the power of the King to grant such rights and privileges as the Charter specifies, and that the Charter would cover all the territory claimed; but the question of whether that territory belonged to the King to grant was not before them. With respect to the territory which the wording of the Charter would cover, it would be difficult to say what it would not cover; and with respect to the validity of the grant of such powers, it is to be remarked that very high authorities have given a directly opposite opinion; and it may be asked why, if the Charter was valid, did the Company procure an Act of Parliament to confirm it in 1690, and why, when that Act expired, which was limited to seven years, did they again ask for an Act to continue it? It is worthy of notice, too, that the seven years' Act was passed during war with France, when it appears that Parliament did not scruple to grant or confirm a Charter for countries to which Great Britain had, at best, but a disputed title, based only upon a very partial, and even during peace, a very precarious possession; nor is it less worthy of remark, that when Parliament refused to re-grant or continue the Charter, the Treaty of Ryswick had intervened, by which the rights of France were recognized, and those of Great Britain left, at most, in doubt, and when, therefore, any such Act would have been a direct violation of an international Treaty.

Another opinion appears to have been obtained by the Hudson's Bay Company at an earlier period, from Romilly, Holroyd, Cruise, Scarlett and Bell, equally upon the case drawn and without reference to the real points at issue, merely affirming that the grant of the soil contained in the Charter is good, and that it will include all the countries the waters of which flow into Hudson's Bay. This opinion is, therefore, like the other, of no weight on questions which were not before the learned gentleman who gave it.

Opposite opinions were obtained at an earlier period by the North-West Company, viz., in 1804, from Sir V. Gibbs and Mr. Bearcroft. These opinions, however, although they touched the fundamental principles of the Charter, had no reference to the interior countries on the Red River, Lake Winnipeg, the Saskatchewan, etc., for the simple reason that no opinion was asked on a case which only arose six or seven years later, when Lord Selkirk came on the field.

The position of the question at this period was that the North-West Company, being in possession not only of all the country formerly possessed by the Canadian-French in that direction, but also of the country first discovered by themselves, to the north-west of the Churchill River, came to the conclusion that their trade could be more conveniently carried on with these more remote parts through Hudson's Bay than through Canada. The question they submitted, therefore, was solely in regard to the validity of the Charter in respect of the navigation, trade, and fisheries of the Bay itself. The North-West Company as little dreamt of asking an opinion respecting the legality of their trade in the interior as the Hudson's Bay Company thought, at that period, of attempting its forcible restraint. In the case put it is to be remarked that no reference is made to the early possessions of the French on the coasts of the Bay, and consequent possession of the Bay itself in communicating therewith, and yet, and even without this, these opinions are entirely adverse to the exclusive privileges claimed under the Charter.

After the difficulties occasioned by the more recent assumption of power in virtue of the Charter to expel the North-West Company from the Red River country, under the

auspices of Lord Selkirk, had become serious, another opinion was obtained by that Company in 1816, from Sir Arthur Pigott, Sergeant Spankie and Lord Brougham. This opinion must be held to be more valuable than those obtained by the Hudson's Bay Company, inasmuch as it enters more into the merits of the case, and is therefore more explicit as to the real views of the learned counsel on the subject submitted to them, whereas the opposite opinions are such as the gentlemen who gave them would be at liberty to ignore upon a fuller submission of the case, without incurring a charge of inconsistency.

The opinion under consideration is very decided on the point that the Red River and Saskatchewan countries are not within the limits of the Charter, even upon the merits of the description contained in the Charter itself, apart from the question of prior possession by another State. The question of prior occupation of these localities by the French is indeed lightly touched upon, though the opinion, as above, is definitely given without it; but the rights of Canada now for the first time fully discussed, based on prior discovery, at least of the whole of the interior, prior occupation on the shores of the Bay itself, and international treaties, do not appear to have ever been pronounced upon by any of those high legal authorities who have heretofore been consulted, because no such case has ever been submitted; and yet, based upon history and facts, it may be taken to supersede all necessity for raising any question as to the extent of the royal prerogative in giving validity to such a Charter.

Had the Hudson's Bay Company indeed deemed their position good in law, as against the North-West Company, in respect of the Red River country, it can scarcely be supposed that they would have resorted to force at such a lavish expense (and it must be added, involving no small amount of bloodshed), when the question could have been so easily determined by the legal tribunals, at an expense altogether inconsiderable as compared with the actual losses and costs incurred. They have indeed attempted to show that they had not an equal chance with their rivals in the courts of this Province; but not to speak of the injustice of such an insinuation in itself, the objection is untenable while *they had the right of appeal*, and to suppose that they were deterred from taking such a course from any difficulty attending the proceeding would be simply absurd, when we find them organizing an *army* to defend their claims in those remote localities, and thus voluntarily removing the venue from the courts of law, by a far more difficult and expensive process, to the arbitrament of force, where the interference of law could not be so readily invoked to check their proceedings.

And if any justification of this course could be based on the supposed validity of their Charter, and on the ground that it could be construed to cover that locality, why, when they failed to maitain their position by force, when the North-West Company, even after the temporary interruption of their trade through the seizure of Fort William by Lord Selkirk, still continued in the ascendant, why did they not then resort to a trial at law, which, if it had resulted in their favour, would at once have secured a power exactly commensurate with the emergency to maintain their rights? for then, if the civil power had proved insufficient, the whole power of the empire would have been available as far as necessary. But instead of trying the issue in a Court of Law, they finally amalgamated with their rivals, affording thereby a clear proof that they had no hope of being able to treat them otherwise than as possessing equal rights, thus consenting to their opponents sharing with them what they had previously contended to be their private property.

To conclude the question of the Hudson's Bay Company's territories under their Charter, therefore, it is difficult to arrive at the result that they have any territorial rights at all, for in the first place, the country was practically occupied by the French before the date of the Charter, and consequently excluded from it; and in the second place, because the whole country, including Hudson's Bay, was known as New France or Canada, as per maps and descriptions publicly known throughout Europe previous to that date, and therefore, if not so before, became the property of France by the Treaty of St. Germain-en-Laye in 1632, and as such *necessarily could not be* and *expressly was not* granted by their Charter; and in the third place, because by the Treaty of Ryswick the right of France to expel them as trespassers on her soil was manifestly admitted. And finally, even assuming

that Great Britain originally had acquired a divided right with France, each to the extent of the establishments which their subjects respectively were the first to form, the Hudson's Bay Company would only have a right, under their Charter, to those particular posts, or forts, which they were the first to take possession of in localities previously unoccupied, for the Treaty of Ryswick conferred nothing upon them (if it even permitted them to retain anything, which is doubtful); the Treaty of Utrecht, although it gave Hudson's Bay to the British, conferred nothing upon the Company, apart from other British subjects; and the Treaty of Paris (although it gave Canada to Great Britain) conferred nothing upon them, except rights in common with other British subjects; while until eleven years after the last-named treaty, they never occupied anything beyond their original establishments on the coast, and those (also on the coast) conquered from or ceded by France at the Treaty of Utrecht, but which could not, by such subsequent conquest, or cession, be made subject to their Charter.

Boundaries of Canada.

Having thus disposed of the boundaries of the Hudson's Bay Company's Territories—if such can be said to exist—the boundaries of Canada next come to be considered, and a division of the subject will naturally suggest itself into two heads. First, the original boundaries of Canada under the French; and second the boundaries of Canada as acquired by Great Britain in 1763. The southerly boundaries, when not affecting the present question, need not of course be particularly referred to.

It will not be necessary to enter at length into the question of the original boundaries under the French, as they have already been sufficiently indicated. They *claimed* all to the north of the St. Lawrence, and were the first to *occupy* Hudson's Bay. If the British, besides their visits in search of a north-west passage, had seen fit to occupy the country for any practical purpose and been the first to do so, they might no doubt have claimed it for their own. Had any such actual occupation followed the voyages of Hudson and Button, notwithstanding the French footing on and claim to the whole continent north of the St. Lawrence, it must be admitted that a valid title would have been created. But when such occupation was only first attempted some fifty or sixty years later, in support of a commercial project of two Frenchmen, who had been already engaged in the trade, and when France was in formal and actual possession, it cannot be denied that the French title was the preferable one. Of the original territories of Canada, Great Britain therefore acquired a part by the Treaty of Utrecht, the residue remaining to France for fifty years later. On this head there seems to be no dispute, for British authorities designate a part of what they claim to have been acquired by that treaty as Canada.

It now remains to be considered what were the boundaries of the country finally acquired by the Treaty of 1763, which, according to French and other authorities, was much larger than according to British authorities; but it will perhaps be most satisfactory for the present to adopt the latter.

One of the most circumstantial British accounts of the westerly possessions of the French is to be found in a geographical and historical work published by Thos. Jefferys in 1760. After giving the French account of Canada, he proceeds to give the English version of its boundaries in the following words:—

"Canada, according to the English account, is bounded on the north by the high lands which separate it from the country about Hudson's Bay, Labrador or New Britain, and the country of the Eskimeaux and the Christeneaux; on the east by the River St. Lawrence; and on the south by the Outawais River, the country of the Six Nations and Louisiana, *its limits towards the west extending over countries and nations hitherto undiscovered.*

The high lands referred to in the above are distinctly delineated on the maps published with the work as the northerly section of the range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake or Lac des Forts, etc. Describing the country from Lake Superior westward, the author goes on, at page 19, as follows:—

"At the mouth of Les Trois Rivieres, or the Three Rivers, is a little French Fort called Camenistagouia; and twenty-five leagues to the west of the said Fort, the land begins to slope and the river to run towards the west.

"At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles, eighty leagues further, on the Lake des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake of Ouinipigon. Fort La Reine, which is the fifth, lies a hundred leagues further on the river of the Assiniboels. Another Fort had been built on the River Rouge, but was deserted on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac des Prairies, or of the Meadows; and the seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The River Poskoyac is made by De Lisle and Buache to rise within twenty-five leagues of their west sea, which they say communicates with the Pacific ocean. *All these Forts are under the Governor of Canada.*"

The above, it will be observed, is the English account of what was still French Canada in 1760, just after the taking of Quebec and before the final conquest and cession of the country. The River Poskoyac is that which now bears the name of the Saskatchewan upon which Sir Alexander McKenzie states that the French had another Fort higher up than Fort Poskoyac.*

The same author, Jefferys, in his description of Louisiana, says: "It is bounded on the N. by Canada; on the E. by the British Colonies of New York, Pennsylvania, Maryland, Virginia, etc., etc." The map accompanying this description claims the British Colonies, Virginia, etc., as coming up to the east bank of the Mississippi, and therefore it is Louisiana west of the Mississippi that he refers to as bounded by Canada on the north, that is to say, from the sources of the Mississippi westward.

The same year in which this work was published, all Canada was surrendered to the British, though not finally ceded till three years after.

In surrendering the country to the British, the Marquis de Vaudreuil submitted articles of capitulation which were marked "granted," or "refused," etc., according as they were finally agreed to by General Amherst. In guarding the interests of the Canadian colonists in every part of the country surrendered, the localities above described by English authority as being under the "Governor of Canada," are designated as "*the Countries above*," and the 46th article of the capitulation is as follows:

"The inhabitants and merchants shall enjoy all the privileges of trade under the same favours and conditions granted to the subjects of Her Britannic Majesty as well in the *Countries above* as in the interior of the Colony.—Granted."

By which these countries were manifestly surrendered along with the rest of Canada, and the future rights of the Canadians guaranteed thereto by the provision that no British subjects should ever enjoy any privileges of trade there in which they did not share; not indeed that this guarantee, although it would decidedly have that effect, could have been foreseen as a safeguard against the Hudson's Bay Company who had never at that period penetrated into the country, it being simply intended to prevent any cause whatever from depriving the French colonists of the benefits of a trade, which had always been one of the most important in the country.

In the negotiations for peace that followed in 1761, which were directed on the one part by Mr. Pitt, and by the Duke de Choiseul on the other, and which ended, for the time, in failure, France contending for the boundaries of Louisiana extending to Canada, which Great Britain opposed. Finally, the Treaty of 1763 allowed Louisiana to extend west of the Mississippi to its source, and made that river from its source downwards

* "It may be proper to observe, that the French had two settlements upon the Saskatchiwine long before, and at the conquest of Canada; the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent."—Note to General History of the Fur Trade, p. lxxiii. See McKenzie's Voyages. London, 1801. [*See* note (*), *ante*, p. 16.—G. E. L.]

the boundary between the British and French possessions,—the boundary from the source of the Mississippi westwards being left undertermined, a question which had ultimately to be settled with the United States instead of with France.

The system adopted and industriously followed up by the two rival Companies after their union had indeed so disseminated an erroneous appellation, that the country north and north-west of the Mississippi had come to be commonly called the Hudson's Bay Company's Territories; but when diplomatists and statesmen came to study the subject, tracing up from history and fact their respective claims, as bearing upon the Oregon question, they did not stultify themselves by the use of such an erroneous term; accordingly we find Mr. Buchanan, now President-elect of the United States, using the following language, in concluding a proposition made by him on 1st July, 1846:—

"The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of *ancient Louisiana and Canada* to the Pacific along the same parallel of latitude which divides *them* east of the Rocky Mountains."

The same line of argument sustains the British plenipotentiary when, in arguing the pretensions of his Government to Oregon, he traces the progress of the Canadians westward across the Rocky Mountains to the Pacific.

The next step in the natural progress of events is the description of Canada under British sway. The first step after the Treaty of Paris was to provide for the government of the settled parts of the country, for which purpose the Government of Quebec was organized, comprising, however, a very limited portion of Canada, as per proclamation of 7th October, 1763, the rest of the country being thereby reserved from survey or settlement, for the moment, for the protection of the Indians. The descriptions of Canada, however, of that period, took in the country to the westward of Pennsylvania, by the Ohio River, to the Mississippi. And the Imperial Statute of 1774, commonly called the "Quebec Act," describes the Province as extending "Northward to the Southern Boundary of the Territory granted to the Merchant Adventurers of England trading to Hudson's Bay," *but does not specify what their boundaries are*, and it will be seen, by what follows, that the construction put upon this Act by the British Government, nine years later, was adverse to the present pretensions of the Company. The Treaty of Independence of the United States provided a new southerly boundary for Canada, a part of what had formerly gone under that name having been ceded to the United States; and by the commission issued to Lord Dorchester—the first after this Treaty—the same words are used in describing the boundaries of Canada, as in the Treaty, viz.:—

"Through Lake Superior, northwards of the Isles Royal and Phillipeaux to the Long Lake; thence, through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said Lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territories granted to the Merchant Adventurers of England trading to Hudson's Bay."

This description, it will be seen, leaves the boundaries beyond the sources of the Mississippi indeterminate. On the supposition that a line due west from the Lake of the Woods would intersect the Mississippi, the King was obliged to limit the extent of Canada on such line to the Mississippi proper, because, by the Treaty of Paris, France retained the whole country to the west of the Mississippi from its source downwards. Had the King's Commission said from the intersection of the *due west* line with the Mississippi "*due north*," it might have been argued that it provided a westerly boundary, but it simply says "*northerly*," because although it was necessary to limit it to the Mississippi, where Louisiana commenced, there is no need for being specific beyond the sources of that river where the westerly boundary of Canada was yet unknown. Of the extent of Canada to the north by this description, it is enough to say that it was the same as by the Act of 1774, and required the boundaries of the territory granted to the Hudson's Bay Company to be defined *first*, and if that failed, it had no other limit, short of its original extent under the French.

At the "definitive Treaty of Peace" with the United States, their territory did not extend at any point to the west of the Mississippi, until they acquired Louisiana in 1803. It will be remembered that Mr. Pitt objected to the northerly boundary of Louisiana

coming so far north as the southerly boundary of Canada in 1761, that nevertheless it was so settled in 1763 that the Mississippi should be the boundary to its source. This result seems to have been a compromise, by which Louisiana was confined almost entirely to the west of the Mississippi, Great Britain thus gaining her point on the east, which came more nearly in contact with her old possessions, and giving to France entire scope on the west to the very sources of the Mississippi, the boundary from thence westward being left undetermined. This point had accordingly to be afterwards settled with the United States, who had in the meantime acquired the rights of France. This settlement ultimately admitted the 49th parallel of latitude as the northerly boundary of Louisiana, and as such necessarily the southerly boundary of Canada, from the Lake of the Woods due west to the Rocky Mountains, passing north of the source of the Mississippi proper, though intersecting some of its tributary streams, the only error in which was that the line should not have been north of the source of the Mississippi, an error resulting from a previous treaty with the United States, at a time when it was supposed that the parallel of latitude agreed upon east of the Mississippi would intersect that river.

Were the King's letters patent to Lord Dorchester indeed taken literally at the present day in regard to the southerly boundary of Canada, the due west line of the description, not intersecting the Mississippi, would go on as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or if limited at all, it would be by the first waters of the Mississippi which it did intersect, which would be the White Earth River, and this would in fact correspond with the extent of Canada previously known to the French, taking in all the old forts already mentioned, and leaving out the "countries and nations hitherto undiscovered," that is at the time of the Conquest, though at the period when that description was made, the North-West Company were carrying on an active trade much farther to the west: nor is it clear that this would be adverse to the intention of the description, for some of the maps of that period represent the Mississippi as west of the Red River.

The southerly boundary of the British dominions west of Lake Superior being therefore demonstrated as identical with the southerly boundary of Canada to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found; is it the White Earth River, the first waters of the Mississippi with which the due west line intersects? or is it the summit of the Rocky Mountains, on the same principle that the *coterminous* boundary of Louisiana was ultimately so construed?

The next point to be determined is the northerly extension of Canada from its southerly boundary. The official description, corresponding with the Act of 1774, carries it to the boundary of the Hudson's Bay Company's Territories, but the same official description ignores the boundaries they claim (*thus proving so far the construction then put upon the Act of 1774*), for it carries the southerly boundary of Canada down the water-shed of Hudson's Bay from two to three hundred miles to the Lake of the Woods, and *thence due west;* thus making the starting-point far within what the Hudson's Bay Company claim, and thus, *from a point within what they claim* as their territory, it is to extend northerly to their territories. If, then, the "rights" of the Hudson's Bay Company were even far less equivocal than they are, their southerly boundary, as pretended by themselves, is entirely demolished, and the question arises, *where is the boundary of their territories so described as the northerly limit of Canada?* The question of territorial rights has already been so fully discussed that it is unnecessary to repeat the arguments. The only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is—like the intersection of the due west line with the Mississippi—a myth, and consequently that Canada has no particular limit in that direction.

The accompanying map illustrates the northerly boundary of Canada, according to British authorities, as ceded by the French in 1763, there being no westerly boundary then known or since provided. This is perhaps all that could, in the first instance, be absolutely claimed as under the Government of Canada, were it not that, since the final determination of the southerly boundary, the Imperial Government merely described the authority of this Government as extending over *all the countries theretofore known as*

Canada, which might fairly be taken to cover the territory acquired by the Treaty of Utrecht, as well as that acquired by the Treaty of Paris.

Boundaries of the Indian Territories.

The boundaries of the Indian Territories need little consideration or explanation, as they simply include all that belongs to Great Britain in North America to the north and west of Canada, excepting the territory (if any) which the Hudson's Bay Company may of right claim. It must not be lost sight of, however, that the great bulk of this territory has been acquired by the Crown of Great Britain, through discoveries of its Canadian subjects, beyond whatever may be determined to be the westerly boundary of Canada, across the Rocky Mountains to the shores of the Pacific, and by the Mackenzie River to the Frozen Ocean. The importance of these discoveries in the negotiations pending the Treaty of Oregon cannot be forgotten, for it is in virtue of *Canadian Discovery* and *Canadian Settlement* that the British negotiator was enabled to maintain his position in the controversy, and secure a footing for his country on the Pacific. And when, it may be asked, did ever the Hudson's Bay Company afford such an important advantage to British interests?

Sir Alexander McKenzie's journey in 1793 across the Rocky Mountains (the first ever performed north of Mexico) is thus referred to by the British Plenipotentiary, in negotiating the Treaty of Oregon:

"While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander McKenzie, *a partner in the North-West Company*, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in these latitudes. On the return of McKenzie to Canada, *the North-West Company* established trading-posts in the country to the westward of the Rocky Mountains."

This was the British title to that part of the country, and but for this journey and the establishing of these trading-posts, by which were acquired what the same diplomatist says "may be called beneficial interests in those regions by commercial intercourse," the probability is that Great Britain would now hold no continuous possessions across this continent, if she even held any isolated localities on the Pacific, in virtue of her discoveries by sea.

Lewis and Clark, Americans, descended the southerly branch of the Columbia River, 1805, and in 1811, Mr. Thompson, of the North-West Company, came down the main branch from the north, whose discovery is thus referred to by the British Plenipotentiary:—

"In the year 1811, Thompson, the astronomer of the *North-West Company*, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clark, he continued his journey to the Pacific."

And again:—

"Thompson, of the *North-West Company*, was the first civilized person who navigated the northern, in reality the main branch of the Columbia, or traversed any part of the country drained by it."

This is the title by which Great Britain has been enabled to retain the main branch of the Columbia to its intersection with the 49th parallel of north latitude, and the free navigation for her subjects of the whole river from that point to its discharge in the Pacific Ocean, as secured by the Treaty of Oregon, 1846.

With respect to McKenzie's discoveries to the north, no diplomatic reference thereto can be quoted, inasmuch as there has been no disputed title on the part of any foreign power to give rise to any controversy on the subject.

It may fairly be urged, therefore, that these "Indian Territories," originally the fruits of Canadian enterprise, perseverance and industry, should no longer be shut out from the Canadian people, but should in fact be united to Canada as a part of the British

dominions which Canadian subjects have had the merit of acquiring and retaining for the British Crown.

Jurisdiction.

The question of jurisdiction next comes under consideration, and in this, as regards the Hudson's Bay Company, it is apprehended that the actual exercise of it is widely different from what existing laws would sanction.

The mystery with which this Company have managed to shroud their operations in the interior renders it difficult to say what they do or what they do not do, but it is generally understood that they actually exercise unlimited jurisdiction in every respect, civil, criminal, and governmental, and that not only in what has been considered their own territories, but also in the Indian Territories and those parts of Canada not immediately contiguous to settlement; all of which existing law positively forbids them to do, it need not be said, in Canada, but either in their own territories or in the Indian Territories.

By the Imperial Statute 43 Geo. III., cap. 138, the jurisdiction over the Indian Territories and all "*parts of America not within the limits of the Provinces of Lower or Upper Canada*, or either of them, or within any civil government of the United States of America," is vested in the said Provinces. It is a curious circumstance that the very words of this Act, which seem to have been intended to deny all claim to any jurisdiction on the part of the Hudson's Bay Company, should have been taken hold of as the means of questioning its reference to them. The preamble of the Act, in giving the reason for the enactment, states that offences not committed within the limits of the Canadas or the United States, as above, "are therefore not cognisable by any jurisdiction whatever." This, the Company argued, could not mean their territories, *because* jurisdiction *did* exist there. The Act, they said, could not mean *all* British America not within the limits of the Canadas, for the assertion that no jurisdiction existed was not true of Nova Scotia or New Brunswick, and therefore might not be true of Hudson's Bay. Thus, in fact, it appears that the framers of the Act having their minds directed to the North-West, where the offences referred to had occurred, forgot to exclude the Provinces lying on the opposite side of Canada, on the Atlantic coast, from its operation; and this omission, when the war was carried on between the two Companies in the interior, Lord Selkirk turned to account to throw doubt on the applicability of the Act to the Company's Territories. But the assumption that this Act does not affect their pretensions is doubly futile; for, when more closely considered, it either brings their territories within Canadian jurisdiction or it ignores them altogether, and in either case it contracts the limits they claim. If they make good their assertion that it does not affect their territories, then it destroys their claim to have their limits extended to the boundaries of Canada. The territories referred to in the preamble of the Act are those not within the limits of *either* Lower or Upper Canada, the two Provinces being treated *distinctly* as regards the territories not within their limits. Now, taking Lower Canada in the first instance, it is bounded by the Ottawa, and a line due north from the head of Lake Temiscamingue; and the places outside its limits on which the Act would have effect, if not the Company's territories, must certainly be something between those limits and their territories. But the question is more important as regards the places outside of Upper Canada. If the maps accompanying the "Statement of Rights," submitted by Sir J. H. Pelly, be correct, then the territory affected by the Act is about 1,500 miles distant in its nearest part from the most remote point in Canada. In other words, Canada ends at the source of Pigeon River, and the Indian Territories begin at the top of the Rocky Mountains, and we are required, therefore, to assume that the Imperial Legislature meant to commit the absurdity of giving jurisdiction to the courts of Canada over a territory beginning at a distance of some fifteen hundred miles from her frontier, while a different British jurisdiction (that of the Company) prevailed in the intervening space. But assuming for fact the Company's view of the case, that it did not affect their territories, we find the very purpose for which the Act was passed, as expressed in the title, to be, to provide a jurisdiction for certain parts of North America *adjoining to* the said Provinces of Lower and Upper Canada. Consequently, if the territory affected by the Act only commences at the summit of the

Rocky Mountains, as represented by the map submitted by Sir J. H. Pelly, then as it *adjoins* this Province, Canada must extend *to* the summit of the Rocky Mountains; so that, on their own showing, the jurisdiction they exercise in the intervening space, at Red River, for instance, is out of their own territories, and, therefore, not only without the sanction of law, but in violation of a positive enactment. They must thus either ignore their own pretensions to the territory between what they call the westerly boundary of Canada and easterly boundary of the "Indian Territories," or they must admit that the Act under consideration (which is still unrepealed) applies to their territories, in which case their jurisdiction in every part would be in violation of the statute.

But if there was any doubt on the subject before, it was fully removed by the Act 1 and 2 Geo. IV., cap. 66, which was passed after all the strife and bloodshed in the North-West, and which, after reciting the doubt raised respecting the former Act being applicable to the Hudson's Bay Company's territories, declares at sec. 5, in the strongest and most comprehensive manner, that the said Act and all its clauses shall be construed to apply to their territories, anything in "*any grant or charter to the Company to the contrary notwithstanding.*"

This Act, 1 and 2 Geo. IV., cap. 66, gives jurisdiction, as full and complete as language can make it, over all the Indian and Hudson's Bay Company's Territories, to the Courts of Canada, and it provides for the appointment of Justices of the Peace by the Crown (both for the Indian Territories and Hudson's Bay Company's Territories), to whom the *Canadian Courts are empowered* to issue commissions "to take evidence in any cause or suit, and return the same, or try such issue, and for that purpose to hold courts," etc. These courts are most distinctly made subordinate to the Courts of Canada, &c., and can, in fact, be created by and exist through them only.

By the 11th and 12th clauses, however, the Crown is empowered to create Courts of Record, without the intervention of the Canadian Courts (but without limiting the power to be exercised through them), for the trial of small causes and petty offences, the former being limited to civil cases not affecting a larger amount than £200, and the latter to cases in which the offence does not subject the person committing the same to capital punishment or transportation.

By this Act it is repeatedly declared and enacted in the most emphatic manner, that its enactments shall have effect "notwithstanding anything contained in any Charter granted to the Governor and Company of Adventurers of England trading to Hudson's Bay."

It is true the last clause of the Act reserves to the Company, in the most ample manner, all rights and privileges they "are *by law entitled* to claim and exercise under their Charter." This, it will be observed, is what the "Statement of Rights" refers to when claiming a "*concurrent jurisdiction*" with the Canadian Courts. Now, when it is observed that the Legislature has refrained from expressing any opinion as to what the rights and privileges of the Company really are, and cautiously abstained from recognizing any but what they already had "*by law,*" it is difficult to suppose that it was the intention of the Act to recognize in them those very powers which it was making the most ample provision for the exercise of by a totally different authority in strong and repeatedly expressed abnegation of their pretensions.

It is also to be observed that the previous Act, 43 Geo. III., which denies their jurisdiction, is still in force, unrestricted in every particular, and not deriving its force from the subsequent Statute, which is merely *declaratory* in that particular of its proper construction.

The question of whether the Company can exercise any legal jurisdiction within their own territories—limited to their just extent—loses its importance, however, in face of the more serious question of its actual exercise both in Canada and the Indian Territories, and that even to the extent of life and death, while the intention of the Imperial Legislature in creating a jurisdiction for these territories, reserved all important cases, either civil or criminal, for trial by the regularly constituted legal tribunals of an organized community, where the *Charter* of British rights would be held as sacred as the interests of a commercial Company who assume to be themselves the judges, where (without any reflection

upon them collectively or individually) cases must, in the very nature of things, arise in which they ought to be the judged.

It, therefore, becomes of very great moment to ascertain the truth of certain statements that have been made to the effect that their principal officers at Red River hold their commissions from the Crown, and if so, under what form, for what extent of territory, and how described. Such commissions might, no doubt, have been issued under the Statute 1 and 2 Geo. IV., for the Hudson Bay Company's Territories and for the Indian Territories, for the trial of small causes and offences of a minor nature, as already described, without in the least infringing upon or limiting the right of Canada to intervene; but if the British Government has expressly included the Red River country in any such commissions, it can only have been through a misapprehension of boundaries, which is not to be wondered at from the policy pursued since the union of the Companies, and the erroneous view of the case they have so constantly disseminated; and no doubt any such powers, if they have been granted, would be withdrawn as soon as the case has been brought fully under the consideration of the Imperial authorities.

In concluding the question of Jurisdiction, it is necessary to observe that the Imperial Statutes herein quoted, which vest the jurisdiction in Canada to the shores of the Pacific, have been repealed in so far as they relate to Vancouver's Island by the Act 12–13 Vic., cap. 48, which re-invests the jurisdiction of Vancouver's Island in the Imperial Government until the establishment of a Local Legislature, which the Act contemplates.

At the same time, a Charter was granted to the Hudson's Bay Company for the colonization of the island, conveying a grant of the soil.

Neither the Act nor the Charter, however, confers any jurisdiction upon the Company.

The Company were required by the terms of the grant to colonize the Island within five years, failing which the grant was to become void. It was also stipulated that the grant might be recalled at the time of the expiration of their lease for the Indian Territories upon payment to the Company of the expenses they might have incurred, the value of their establishments, etc.

General Remarks.

Before concluding this Report, it is desirable to offer a few general remarks upon the subject, which the policy of the Company has kept out of view, and which consequently is not generally well understood.

The Hudson's Bay Company claim under three separate titles, the first of which is the Charter of Charles II., granted in 1670, *forever*. The second is the lease orginally granted in 1821 to them, in conjunction with the North-West Company of Canada, for the Indian Territories. The third is their title to Vancouver's Island, as explained. Under the first, they base their claim to government, jurisdiction, and right of soil over the whole country watered by rivers falling into Hudson's Bay; at least, such is the theory, although they have abandoned it south of the present southerly boundary of Canada at Rainy Lake, the Lake of the Woods, and along the 49th parallel, to the south of which those rivers take their rise. Under the second, they claim exclusive trade from the Rocky Mountains west to the Pacific, and from the sources of the McKenzie River to the Frozen Ocean. There is no dispute about their title on this head, but their lease expires in two years, and it is the renewal of this lease for a further period of twenty-one years which they now seek to obtain.

It will be seen by the question of boundary already treated, that the country about Red River and Lake Winnipeg, &c., which they claim under their Charter, absolutely belongs to Canada; and it will be observed that the abstract right, not the value of the territory, has been dwelt upon, but unfortunately the latter has been as little generally understood as the former, the result of the means the Company have taken to conceal it, for seldom if ever has the wisdom and foresight of man devised a policy better calculated to the end for which it was intended than that adopted since the union of the Companies in 1821.

Before that union, the Canadian Fur Trade gave employment to some thousands of men as mere carriers, or "*Voyageurs*" as they were termed.

In endeavouring to depreciate the national services rendered by the North-West Company during the war of 1812, at the capture of Michilimacinac, etc., Lord Selkirk alludes to this body of men as forming the "*Voyageurs Corps*," but denies credit to the Company for their important services, which he admits "in a great measure secured Canada," because they were not constantly employed by the Company, and effected this service at a season of the year when the Company did not require them. Assuming this to be the fact, however, had there been then, as now, no such Company and no such trade, there would have been no such body of men ready for action in the hour of danger.

Had the circumstances of the trade continued the same to the present day, settlement must have followed the route of such a line of traffic, and the continual intercourse between this country and the fertile plains of the "far West" would have placed us as far in advance of our American neighbours in the colonization of those countries as we are now behind them.

But the policy of the united Companies has been so admirably carried out in all its details, that an erroneous impression respecting the country and everything connected with it had gradually got possession of the public mind, and it is wonderful with what tact such impressions may sometimes be conveyed without any statement being made contrary to truth. The very appellation of "*Hudson's Bay Territory*" as applied, for instance, to the Red River country, carries a false impression with it, for the waters of the Mississippi and the Red River, the Assiniboine and the Missouri, interlace with each other there, and therefore the designation of "*Gulf of Mexico Territory*" would just be as correct. But what a different impression it would convey as regards climate. Again, almost every mention of the available parts of the Western Territories, which are well known to possess a soil and climate adapted in the highest degree for successful settlement, is interwoven with some reference to *ice* in some shape or other, which no doubt the Company truly encounter in carrying the trade some eight hundred miles due north through Hudson's Bay.

An admirable specimen of this kind of policy, by which erroneous impressions may be conveyed, is to be found in Sir J. H. Pelly's letter to Lord Glenelg, of 10th February, 1837 :—

"For many years prior to the conquest of Canada, French subjects *had penetrated by the St. Lawrence to the frontiers of Rupert's Land; but no competition had occurred* between the traders of the two countries *within the territories of the Hudson's Bay Company* previous to the cession of Canada to Great Britain.

"Subsequent to that period, the greater capital and activity of British subjects led to a competition, *first on the frontier parts, then in the interior*, and at last to the formation of a Company, combining all the individuals at that time engaged in the trade to countries bordering on the west of Lake Superior, under the firm of the North-West Company of Montreal."

This, when dissected, is a significant paragraph. *Where are "the frontiers of Rupert's Land,"* if the French, whose forts were all around Lake Winnipeg, had not reached them before the cession of Canada to Great Britain? This is an important corroboration of the views of the boundary question explained in the present report.

That "no competition had occurred within the Territories of the Hudson's Bay Company" up to that time may be very true, because the Company had never come up from the shores of the Bay, and the French had not gone down—from their places on Lake Winnipeg—to the Bay. The second paragraph above quoted may also be substantially true, but yet it is so framed as to convey to the general reader that the competition arose from the inhabitants of Canada advancing beyond where they had been before; whereas it was the Hudson's Bay Company who then came up, for the first time, from the shores of the Bay, which led to the competition "first on the frontier parts" of Rupert's Land, "then in the interior," on Lake Winnipeg, the Saskatchewan, etc., where the Canadians had long enjoyed the trade without competition.

Such is the system and policy pursued by the Company to exclude from view and create erroneous impressions respecting the Western portions of this Province, than which there is perhaps no finer country in North America. The same course marks their proceedings at the present moment, for no intimation has been given in this country of their intention to apply for a renewal of the lease of the Indian Territories, though, exercising

the privileges they do in countries subject to the Canadian Government, it would not have been unreasonable to expect a different course. Neither does it appear that they have taken any means to inform the inhabitants of those countries whose rights and interests are most deeply affected by the action to be taken, that they were to make this early application for renewal of their lease. Had it been effected in the quiet manner they seem to have desired—a consummation which the thanks of the country are due to the Imperial Government for having refused to sanction—*they only* would have been heard in their own case, and the result would have been, alike to the people here and in the more remote territories, a surprise.

Canada has no quarrel with the Hudson's Bay Company, and desires no harsh measures towards them. It would be alike ruinous to them, and injurious to the countries over which they hold either legal or illegal sway, to put a sudden stop to their operations; but it is an error to suppose that the governing of those countries is a task of uncommon difficulty. The state of anarchy which prevailed in those countries during the warfare of the Companies was the result of the strife between them, where there was no sort of authority, except what they seemed equally to wield, and not arising from any turbulent or ungovernable spirit on the part of the native population. On the contrary, the moment a recognized authority stepped in to control both Companies, implicit obedience was at once yielded to it throughout those vast territories, and either party would have found itself powerless to command followers for any purpose of further aggression. This was upon the occasion of the withdrawal of all commissions of the peace, previously granted to the leading people of the two Companies, the appointment of two special Commissioners (one of them a member of the Executive Council of Lower Canada), and the issuing of a proclamation in the name of the Prince Regent, by authority of a despatch from Earl Bathurst, of 6th February, 1817, requiring the mutual restitution of all the places and property captured during the strife, to the party who had originally possessed the same, and the entire freedom of the trade to each party, until further adjudicated upon. Galling as this restitution must have been in numerous instances, where party feeling, embittered by the loss of many lives, had reached the highest pitch of excitement, it was immediately complied with.

The proper course to pursue, therefore, would be to lay before the Imperial Government the expediency of annexing the Indian Territories to Canada, showing that by this means only can those countries be retained long in the possession of Great Britain. For colonized they *must and will be;* it is only a question of who shall do it. If we do not, the Americans will, and that in spite of anything the Company can do to prevent it. That these Territories are fit fields for settlement it is useless to dispute, for one physical fact upsets all theories to the contrary. Where a country is found to sustain *animal life* to such an extent that hundreds of thousands of wild cattle find subsistence there both in summer and winter, there man also can find a home and plenty. Nor is the country possessing this characteristic confined to a narrow strip along the frontier, but continuing to widen to the westward it is found that the climate, even on the east side of the Rocky Mountains and at a depth of seven degrees North of the American Boundary, is milder than the average of the settled parts of Upper Canada.

On the west side of the Rocky Mountains the climate is mild to a still higher latitude, but Vancouver's Island, together with the contiguous mainland, is perhaps one of the finest countries in the world for colonization. The only drawback is the difficulty of access —a difficulty which the present system will never remove, for it looms larger now than it did forty or fifty years ago, when the North-West Company of Canada poured a continuous stream of traffic accross the continent. This Island cannot now, of course, be annexed to Canada on the same terms as the other Indian Territories, as the existing Charter under which the Island is held (a different and distinct thing, be it remembered, from either the old Charter or the expiring Lease) entitles the Hudson's Bay Company to payment of the value of their establishments if the grant be rescinded, which Canada would naturally be expected to pay if the Island were conceded to her, and it might be well to see now upon what terms this could be done, because it seems that if it be not done at the expiration of the Lease of the "Indian Territories," it could not be done afterwards, unless indeed the Company have failed to fulfil the conditions required within the first five years.

Twelve years ago the United States had no communication with their territories on the Pacific except by sea; and during the Oregon negotiations, when proposing strenuous measures upon the subject, the President, in his message to Congress, 2nd December, 1845, says:—

"An overland mail is believed to be entirely practicable; and the importance of establishing such a mail at least once a month, is submitted to the favourable consideration of Congress."

How different the circumstances now, and how "entirely practicable" it has proved, need not be dwelt upon, but it must be remarked that at no other point north of the Gulf of Mexico are the facilities for communication across the continent anything like equal to what they are through Canada, there being good navigation three-fourths, if not more, of the whole distance: first to the head of Lake Superior, from whence the navigation is broken to Lake Winnipeg (though about 150 miles of this distance is navigable); then through that Lake to the Saskatchewan, on which there are obstructions in the lower part near the Lake, from whence the navigation is unimpeded to the very base of the Rocky Mountains.

It would be very desirable, therefore, and quite practicable, if the British Government will consent, to annex the Indian Territories, extending to the Pacific, and Vancouver's Island, to Canada, to establish during summer a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly pressed upon the Imperial Government at the present juncture, for on their solution depends the question of whether this country shall ultimately become a Petty State, or one of the Great Powers of the earth; and not only that, but whether or not there shall be a counterpoise favourable to British interests and modelled upon British institutions to counteract the prepondering influence—if not the absolute dominion—to which our great neighbour, the United States, must otherwise attain upon this continent.

No reference has been here made to the controversy between the Company and those who accuse them of exercising a pernicious influence over the Indian population, nor is it necessary to enter into the subject further than to point out the erroneous impression the Company strive to inculcate, to the effect that they are necessary to the Indians. It may well be that the state of things is better under them than it was when the two powerful Companies were in hostile array against each other; and it may be that their affairs are as well conducted, with reference to their effect upon the native population, as could well be expected of a Commercial Company having the primary question of profit and loss as the object of their association. But the question really comes to be, whether those countries shall be kept *in statu quo* till the tide of population bursts in upon them, over an imaginary line, from a country where it has been the rule that the Indian must be driven from the lands the white man covets; or be opened up under the influence of the Canadian Government, which has always evinced the greatest sympathy towards the Indian race, and has protected them in the enjoyment of their rights and properties, not only in their remote hunting grounds, but in the midst of thickly-peopled districts of the country.

JOSEPH CAUCHON,
Commissioner of Crown Lands.

CROWN LANDS DEPARTMENT,
Toronto, 1857.

CHIEF JUSTICE DRAPER TO THE COLONIAL SECRETARY.*

33 SPRING GARDENS,
6th May, 1857.

SIR,—In the last interview with which you favoured me, I took occasion to advert to the question of boundary between Canada and the Hudson's Bay Territory as one which required to be settled as a necessary preliminary to many other very important inquiries

*Report Select Committee, House of Commons (England), on the Hudson's Bay Company, 1857, p. 374.

involved in the matters submitted to a Committee of the last House of Commons, and, as I understood, to be again submitted to the new Parliament.

I alluded to the difference between the views of the Hudson's Bay Company, as expressed in former times, and those which are now, and have been within the last forty years, advanced by them on this point; and I stated my readiness to submit a memorandum to you in relation thereto, which you were pleased to signify your readiness to receive and consider. That memorandum I have now the honour to enclose.

As the construction of the language of the Charter, and the extent of the territory purported to be granted, are involved, it may be considered desirable that the matter should be referred to the Judicial Committee of the Privy Council. In this event, I venture to request that counsel on the part of the Province may be permitted to attend to watch the argument, and, if it be deemed necessary, that they may be heard in support of those views which more immediately affect the interests of Canada.

I have suggested a reference to the Judicial Committee because I think its opinion would command the ready acquiescence of the inhabitants of Canada as to their legal rights, and because I believe they entertain a very strong opinion that a considerable portion of the territory occupied or claimed by the Hudson's Bay Company will be found to lie within the proper limits of that Province.

Whether it would be desirable to sever this from the more general question of the legality and validity of the Charter, is a matter I should desire to leave for your consideration, but in any event I think it expedient that counsel should be permitted to attend to watch the interests of the Province.

I have, etc.,

Wm. H. Draper.

The Right Hon. H. Labouchere.

Memorandum from Chief Justice Draper, Agent of the Province of Canada, enclosed in Letter to the Colonial Secretary, May 6th, 1857.*

It is not proposed at present to discuss the validity of the Charter of the Hudson's Bay Company. A careful perusal of it will suggest many doubts whether it be not altogether void. But assuming that it may be sustainable for every or for any of the purposes for which it was intended, and for the moment conceding that the indefinite description of the territory purporting to be granted does not vitiate the grant, there is a question as to the limits of that territory in which the Province of Canada is deeply interested.

The parts of the Charter bearing on this question are as follows:—

1.—"All the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid" (stated in the preceding part to be those which lie within the entrance of the straits, commonly called Hudson's Straits, in whatsoever latitude such bays, etc., should be), "that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian prince or state, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, inlets, and rivers within the premises; and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, silver, gems, and precious stones, to be found or discovered within the territories, limits, and places aforesaid; and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land: And, further, we do by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits, and places aforesaid, and of all other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, preroga-

* Report Select Committee, House of Commons, Eng., on the Hudson's Bay Company, 1857, p. 374.

tives, royalties, and appurtenances whatsoever, to them, the said Governor and Company, and their successors forever, to be holden of us, our heirs and successors, as of our Manor of East Greenwich, in our county of Kent, in free and common soccage."

And, 2.—"And furthermore, we do grant unto the said Governor and Company, and their successors, that they and their successors, and their factors, servants, and agents, for them and on their behalf, and not otherwise, shall forever hereafter have, use and enjoy, not only the whole, entire and only trade and traffic, and the whole, entire and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas into which they shall find entrance or passage, by water or land, out of the territories, limits or places aforesaid, and to and with all the natives and people inhabiting within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits and places, which are not granted to any of our subjects."

Prior to this Charter, there was little or nothing done within Hudson's Bay in the way of taking any actual possession of the territory granted. The bay had been discovered, several ships from time to time had entered it, and probably some interchange of commodities with the Indians had taken place while the vessels remained within the Straits; but nothing whatever was known of the interior. Charles the Second claimed—for it was no more than a claim—all the territory which the discovery of the Straits and Bay could confer on the British Crown. The French Crown in like manner had claimed, by reason of their actual settlement of Canada, and of their progressive discoveries and trade, not only all the western territory, including that now in dispute, but even the Bay of the North, and thence to the Pole; but neither French nor English had, in 1670, actually penetrated, so far as appears, within many hundred miles of the Red River.*

The settlements made by the Hudson's Bay Company were at first confined to those on the shores of James' Bay, and at the Churchill and Hayes Rivers. Henley House, which is about 150 miles up the Albany River, was not erected before the year 1740. The Company afterwards erected Fort Nelson, which is laid down on the maps at about 200 or 230 miles from the mouth of Churchill River, and the fort at Split Lake, which is represented as about 140 miles from the mouth of the Nelson River. It is believed that these two last-named forts are of comparatively modern erection, but that, at all events, for more than a century after the date of the Charter, these, together with the forts on or near the shores of the Bay, were the only settled posts of the Hudson's Bay Company.

This throws some light upon the view which the Company practically adopted, of the extent of their territories.

In many written documents they treat Hudson's Straits and Bay as the governing and principal matter, in reference to or for the purpose of securing which the grant of territory was made to them.

In a petition addressed by the Hudson's Bay Company to Charles the Second, in 1682, they say that his Majesty was graciously pleased to incorporate them, and to grant to them forever all the said Bay, and the Straits leading thereunto, called Hudson's Straits, with all the lands and territories, rivers and islands in and about the said Bay, and the sole trade and commerce there; and, referring to a letter of Monsieur de la Barre, the Governor of Canada, threatening to drive them out, they observe, they doubt not but that, by the King's Royal authority and protection, they will be enabled to defend his undoubted right and their own within the Bay, "wherein never any nation but the subjects of your Imperial Crown has made discoveries or had any commerce."

In a letter dated January 25, 1696-7, they urge, "whenever there be a treaty of peace between the Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our Charter."

In 1698, in a letter written by their Deputy-Governor to the Lords Commissioners of Trade, they repeat the same desire.

* [It has since appeared that the French had so penetrated prior to 1670.—G. E. L.]

In a memorial, dated in June, 1699, they represent the Charter as constituting them the true and absolute proprietors of Hudson's Bay, and of all the territories, limits and places thereto belonging. They further set forth the attacks made in 1682 and 1686 by the French from Canada, and their applications for redress, and the declaration made by James the Second that he, upon the whole matter, did conceive the said Company well-founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof; and they pray the then King, William the Third, to insist upon the inherent right of the Crown of England and the property of his subjects not to be alienated, that so considerable a trade might not be lost, and the Hudson's Bay Company "be left the only mourners" in the peace of Ryswick.

At this time all their forts but one (Albany Fort) had been taken by the French; some of them, indeed, while the two Crowns were at peace; an act of aggression specially referred to by His Majesty in the declaration of war in 1689.

In January, 1700, being called upon by the Lords of Trade and Plantations, they offered proposals for limits between them and the French in Hudson's Bay, insisting at the same time upon their undoubted right "to the whole Bay and Streights of Hudson." The proposed limits were to confine the French from trading or building any house, factory, or fort to the northward of Albany River, situate in about 53° of north latitude on the west main or coast, or to the northward of Rupert's River on the east main or coast of the Bay, binding themselves not to trade or build any house, factory, or fort to the southward of these two rivers "on any ground belonging to the Hudson's Bay Company." They urged that these limits should be settled; stating, that if the French refused, they must insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which, they observed, the French never yet would strictly dispute or suffer to be examined into, though the first step of the eighth article of the Treaty of Ryswick directs the doing of it. These limits would have given the French access to the Bay by the Moose River.

The French Ambassador did, however, in March 1698-9, set forth the claims of his Sovereign in a long answer to the English memorial, among other things observing that the different authors who have written about Canada or New France gave it no limits northwards, and that it appeared by all the grants or letters of corporation made at several times by the Kings of France to the companies settled in New France, and particularly in 1628, that all the Bay of the North is comprehended in the limits mentioned by the said grants.*

He also further suggested, that if the English had had any knowledge of the Bay, or any claim thereto, they would not have failed to have insisted on it, and expressly to mention it in the Treaty of 1632 (that of St. Germain-en-Laye), when they restored to the French New France. Admitting that the French neither then nor for a long time afterwards had any forts on the coasts of the Bay, he explains it by saying, that being masters of the inland country, the savages, with whom they had a continual trade, brought their furs over lakes and rivers.

In April, 1714, the Hudson's Bay Company thank the Queen "for the great care your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay and Streights of Hudson; the undoubted right of the Crown of Great Britain."

In August, 1714, in reference to the same treaty, the Hudson's Bay Company proposed that the limits between the English and French on the coast of Labrador should commence from the island called Grimington's Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}°$ N., which they desire may be the boundary between the French and English on the coast of Labrador; and that a line be drawn south-westerly, to pass through the centre of Lake Mistassinnie; and from that lake a line to run south-west-

* L'Escarbot describes Canada at the period of the appointment of De la Roche, in 1598, thus: "Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu' à la Mer Pacifique au delà du Tropique du Cancer, au midi les îles de la Mer Atlantique du côté de Cuba l'île Espagnole, au levant la Mer du Nord qui baigne la Nouvelle France; et au septentrion cette qui est dite inconnue vers la Mer Glacée jusqu' à la Pole Arctique."

ward into 49° north latitude; and that such latitude be the limit, that the French do not come to the north nor the English to the south of it.

In another paper of about the same period, they give the following account of the motives which induced the formation of the Company: "It was, therefore, after the happy restoration of King Charles II. that trade and commerce began to revive, and in particular that some noblemen and other public-spirited Englishmen, not unmindful of the discovery and right of the Crown to those parts of America, designed at their own charge to adventure the establishing of a regular and constant trade to Hudson's Bay, and to settle forts and factories there, whereby to invite the Indian nations (who lived like savages many hundred leagues up in the country) down to their factories."

In August, 1719, the Hudson's Bay Company acknowledges the surrender by the French of the Straits and Bay, in such a manner that they had nothing to object or desire further on that head. But they urged the settlement of the limits between the English and French territories without delay, since the French, subsequently to the conclusion of the peace (in 1715), made a settlement at the head of Albany River, upon which the Company's principal factory was settled, whereby they interrupted the Indian trade from coming to the Company's factories. It was therefore proposed and desired, "that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49°, except on the coast of Labrador; unless this be done, the Company's factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved."

In all the foregoing documents it will be observed, that whether upon the peace of Ryswick, when English affairs looked gloomy, and those of France were in the ascendant, or after the Treaty of Utrecht, when the power of France was broken, the Hudson's Bay Company sought to have the boundary between the territories they claimed and those forming part of Canada, settled by some defined and positive line which was to be the result of negotiation, not then pretending that there was anything in their Charter which gave them a rule by which they could insist that the extent of their territories to the southward should be ascertained.

Even in October, 1750, they entertained the same views, while at that time they were pushing their pretensions, both to the northward and westward, to the utmost limits. They state that the limits of the lands and countries lying round the Bay, comprised, as they conceived, within their grant, were as follows: All the lands lying on the east side or coast of the said Bay, eastward to the Atlantic Ocean and Davis' Straits, and the line hereafter mentioned as the east and the south-eastward boundaries of the said Company's territories, and towards the north, all the lands that lie "on the north end or on the north side, or coast, of the said Bay, and extending from the Bay northwards to the utmost limits of the lands there towards the North Pole; but where or how these lands terminate is at present unknown. And towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the Bay westward to the utmost limits of those lands; but where or how those lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea. And towards the South all the lands that lie on the south end, or south side of the coast of the said Bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line," etc., describing the line from Cape Perdrix to the 49th parallel, and along that parallel westward, as in their proposals of August, 1719, excepting that they state the starting point to be in latitude 59½° N. They add, with regard to this boundary, that "to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries which lie nearest their settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretensions to, and at the same time leaves your memorialists but a very small district of land from the south end of the said Bay necessary for a frontier." It is worthy of remark that this line would have given to France the southerly portion of the Lake of the Woods, Rainy River and Rainy Lake, which are now claimed as within the Company's territories.

The foregoing extracts are deemed sufficient to establish what the Company considered their territorial rights in reference to their connection with and proximity to Hud-

son's Bay itself, where they had planted their factories, and desired to attract the Indian trade. They certainly show that neither after the Treaty of Ryswick, nor that of Utrecht, when they stated the boundaries, they were either willing to submit to, or were desirous of obtaining, nor yet in 1750, when they set forth what they thought themselves entitled to claim under their Charter, did they ever think of asserting a right to all the countries the waters of which flow into Hudson's Bay. Their claims to lands lying both northward and westward of the Bay are entirely at variance with any such idea. Sir J. Pelly, before a Committee of the House of Commons, in March, 1837, seems to have adhered to the views expressed in 1750, when he said "the power of the Company extends all the way from the boundaries of Upper and Lower Canada away to the North Pole, as far as the land goes, and from the Labrador coast all the way to the Pacific Ocean," though he afterwards explains that the Company claimed in fee-simple all the lands the waters from which ran into the Hudson's Bay.

It is submitted, that if this latter claim were well founded, the further grant in the Charter of exclusive trade beyond the limits of the territories granted in fee-simple would give colour to the assertion of the "power" of the Company extending to the Pacific; assuming that the word "power" was used to designate the exclusive right of trade, and not the ownership of the territory. For if the Charter gives the fee-simple of the lands to the Rocky Mountains the Pacific is a "Sea," and Fraser's and McKenzie's are "rivers," in which "entry or passage by water or land out of the territories" actually granted may be found; though in such case the application for a license for the exclusive trade would, if the Charter be in this respect valid, have been unnecessary.

The French Government, it appears, would not agree to the proposal which would have limited them to the 49th parallel. Colonel Bladen, one of the British Commissioners under the Treaty of Utrecht, wrote from Paris in 1719 in reference thereto: "I already see some difficulty in the execution of this affair, there being at least the difference of two degrees between the last French maps and that which the Company delivered us." No settlement of the boundary could be arrived at.

If the later claim of territorial limits had been advanced during this negotiation, there can be no doubt it would have been resisted even more strenuously than the effort to make the 49th parallel the boundary was, not merely by contending that the territory so claimed formed part of Canada, and had been treated as such by the French long before 1670, but also that the French King had exercised an act of disposition of them, of the same nature as that under which the Hudson's Bay Company claim, by making them the subject of a Charter to a Company under the Sieur de Caen's name, and after the dissolution of that Company had, in 1627, organized a new Company, to which he conceded the entire country called Canada. And this was before the Treaty of St. Germain-en-Laye, by which the English restored Canada to the French. In 1663, this Company surrendered their Charter, and the King, by an edict of March in that year, established a Council for administration of affairs in the colony, and nominated a Governor; and about 1665, Monsieur Talon, the Intendant of Canada, despatched parties to penetrate into and explore the country to the west and north-west, and in 1671 he reported from Quebec that the "Sieur de Lusson is returned, after having advanced as far as 500 leagues from here, and planted the cross, and set up the King's arms in presence of seventeen Indian nations assembled on the occasion from all parts, all of whom voluntarily submitted themselves to the dominion of His Majesty, whom alone they regard as their sovereign protector."

The French kept continually advancing forts and trading posts in the country, which they claimed to be part of Canada; not merely up the Saguenay River towards James' Bay, but towards and into the territory now in question, in parts and places to which the Hudson's Bay Company had not penetrated when Canada was ceded to Great Britain in 1763, nor for many years afterwards.* They had posts at Lake St. Anne, called by the older geographers Alenimipigon; at the Lake of the Woods; Lake Winnipeg; and two,

* In the evidence given by the Honourable William M'Gillivray, on one of the North-West trials at York (now Toronto), in 1818, he stated that there were no Hudson Bay traders established in the Indian country about Lake Winnipeg or the Red River for eight or nine years after he had been used (as a partner in the North-West Company) to trade in that country.

it is believed, on the Saskatchewan, which are referred to by Sir Alexander McKenzie in his account of his discoveries.*

Enough, it is hoped, has been stated to show that the limits of the Hudson's Bay Company's territory are as open to question now as they have ever been, and that when called upon to define them in the last century, they did not advance the claim now set up by them; and that even when they were defining the boundary which they desired to obtain under the Treaty of Utrecht, at a period most favourable for them, they designated one inconsistent with their present pretensions, and which, if it had been accepted by France, would have left no trifling portion of the territory as part of the Province of Canada.

So far as has been ascertained, the claim to all the country the waters of which ran into Hudson's Bay, was not advanced until the time that the Company took the opinions of the late Sir Samuel Romilly, Messrs. Cruise, Holroyd, Scarlett, and Bell. Without presuming in the slightest degree to question the high authority of the eminent men above named, it may be observed that Sir Arthur Piggott, Sergeant Spankie, Sir Vicary Gibbs, Mr. Bearcroft, and Mr. (now Lord) Brougham, took a widely different view of the legal validity of the Charter, as well as regards the indefinite nature of the territorial grant, as in other important particulars.

Of the very serious bearing of this question on the interests of Canada there can be no doubt. By the Act of 1774, the Province of Quebec is to "extend westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson's Bay."

And in the division of the Provinces under the statute of 1791, the line was declared to run due north from Lake Temiscaming "to the boundary line of Hudson's Bay;" and the Upper Province is declared to consist of or include all that part of Canada lying "to the westward and southward of the said line."

The union of the Provinces has given to Canada the boundaries which the two separate Provinces of Upper and Lower Canada had; the northern boundary being the territory granted to the Hudson's Bay Company.†

It is now becoming of infinite importance to the Province of Canada to know accurately where that boundary is. Plans for internal communication connected with schemes for agricultural settlements, and for opening new fields for commercial enterprises, are all more or less dependent upon or affected by this question, and it is to Her Majesty's Government alone that the people of Canada can look for a solution of it. The rights of the Hudson's Bay Company, whatever they may be, are derived from the Crown; the Province of Canada has its boundaries assigned by the same authority; and now that it appears to be indispensable that those boundaries should be settled, and the true limits of Canada ascertained, it is to Her Majesty's Government that the Province appeals to take such steps as in its wisdom are deemed fitting or necessary to have this important question set at rest.

Paper Relative to Canadian Boundaries, delivered by Chief Justice Draper to the House of Commons Committee, May 28th, 1857.‡

On the 25th January, 1696–7, not long before the Treaty of Ryswiek (which was signed on the 20th September, 1697), the Hudson's Bay Company expressed their "desire that whenever there should be a treaty of peace between the Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our Charter."

---

* [We have now authentic record of their having had at least four posts on the Saskatchewan, of which one at its source. They had also posts on Rainy Lake; on the Red River; on a branch of the Assiniboine; and on Lake Dauphin.—G. E. L.]

† [Since this was written evidence has been obtained establishing the shore line of Hudson's Bay as the northern boundary of Upper Canada.—G. E. L.]

‡ Report Select Committee House of Commons (Eng.) on the Hudson's Bay Company, 1857, p. 378.

The 8th Article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht,* and was never set up afterwards.

In 1687, James the Second declared to the French Commissioners, MM. Barillon and Bonrepos, that having maturely considered his own right, and the right of his subjects, to the whole Bay and Straits of Hudson, and having been also informed of the reasons alleged on the part of the French to justify their late proceedings in seizing those forts (Fort Nelson and Fort Charles),† which for many years past have been possessed by the English, and in committing several other acts of hostility, to the very great damage of the English Company of Hudson's Bay, His Majesty, upon the whole matter, did consider the said Company well founded in their demands, and, therefore, did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof."

"The grants of the French King signify nothing to another prince his right, and they may name what they will in their grants, places, known or unknown, but nobody is so weak as to think that anything passeth by those grants but what the King is rightfully and truly possessed of or entitled to, for *nemo dat quod non habet* is a maxim understood of all; but whereas the French would have no bounds to Canada to the northward, nor, indeed, to any parts of their dominions in the world if they could."—Extract from the Reply of the Hudson's Bay Company to the French Answer left with the English Commissioners, 5th June, 1699, under Treaty of Ryswick.

In 1687 there were discussions between the English and French respecting the right to the Bay and Straits, in which it was, among other things, submitted on the part of the Hudson's Bay Company as follows: "It shall not be the fault of the Company of Hudson's Bay, if their agents and those of the Company of Canada do not keep within their respective bounds, the one pretending only to the trade of the Bay and Straits abovementioned, whilst the other keeps to that of Canada; that the forts, habitations, factories and establishments of the English Company be restored, and their limits made good, as the first discoverers, possessors and traders thither."

The Company having already waived the establishment of a right to Hudson's Bay and Straits "from the mere grant and concessions of the King, which, indeed, cannot operate to the prejudice of others that have the right of discovery and continued possession on their side, it is again averred that His Majesty's subjects only are possessed of such a right to the coasts, bays, and straits of Hudson.

"The Hudson's Bay Company having made out His Majesty's right and title to all the bay within Hudson's Straits, with the rivers, lakes and creeks therein, and the lands and territories thereto adjoining, in which is comprehended Port Nelson as part of the whole."

10th July, 1700,—the Hudson's Bay Company proposed the following limits between themselves and the French, in case of an exchange of places, "and that they cannot obtain the whole of the Straits and Bay which of right belongs to them."

1. That the French be limited not to trade nor build any factory, etc., beyond the bounds of 53° N. or Albany River, to the northward, on the west main or coast, and, beyond Rupert's River, to the northward on the east main or coast.

2. The English shall be obliged not to trade nor build any factory, etc., beyond the aforesaid latitude of 53° N. or Albany River, or beyond Rupert's River, south-east towards Canada, on any land which belongs to the Hudson's Bay Company.

3. As likewise that neither the French nor English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, . . . which the French may very reasonably comply with, for that they by such limitations will have all the country south-eastward betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part, but also a much larger tract of land than can be supposed to

* [They still maintained their original right to the Bay as having been within the limits of Canada, but were compelled to cede it as a result of the reverses they had suffered in the wars of Europe.—G. E. L.]

† [This should read, "in seizing *three* forts (Albany Fort, Moose Fort, and Fort Charles or Rupert)." *See* the Company's memorial to Queen Anne of 1711.—G. E. L.]

lie to the northward, and the Company deprived of that which was always their undoubted right.

By this document it appears the French were insisting on having the limits settled between York and Albany Fort, as in the latitude of 55° or thereabouts.

22nd January, 1701–2, the Lords of Trade and Plantations asked the Company to say "whether, in case the French cannot be prevailed with to consent to the settlement proposed on the 10th July preceding by the Company, they will not consent that the limits on the east side of the Bay be the latitude of 52½°." This proposal would have given the East Main River and Rupert's River to Canada.

On the 29th January, the Hudson's Bay Company alter their proposals, offering the boundary on the east main or coast, to be Hudson's River, vulgarly called Canute, or Canuse River (which I take to be the river now marked on the maps as the East Main River); but, they add, should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this or any former concession of the like nature, but must (as they have always done) insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the 8th Article of the Treaty of Ryswick directs the doing of it. If either proposal had been accepted, the French would have had access to James' Bay. The first proposition left them Moose River; the second appears to have given up Rupert's River.

In February, 1711–12, prior to the Treaty of Utrecht, the Hudson's Bay Company proposed that the limits between them and the French in Canada should begin "at Grimmington's Island, or Cape Perdrix, in the latitude of 58½° north, which they desire may be the boundary between the English and French, on the coast of Labrador, towards Rupert's Land, on the East Main, and Nova Britannia on the French River." That a line be drawn from Cape Perdrix to the Great Lake Mistassing, dividing the same into two parts, beyond which line the French were not to pass to the north, nor the English to the south.

In August, 1714, they renewed their application for the settlement of the limits, adding to their former proposition, that from the Lake Mistassing a line should run south-westward into 49° north latitude, and that such latitude be the limit, and that the French do not come to the north, or the English to the south of the boundary.

In August, 1719, in a memorial, they say that "the surrender of the Straits and Bay aforesaid has been made according to the tenure of the Treaty, at least in such manner that the Company acquiesced therein, and have nothing to object or desire further on that head." But they even then complained that since the conclusion of the peace, viz., in 1715, "the French had made a settlement at the head of Albany River, upon which very river our principal factory is settled, whereby they intercept the Indian trade from coming to the factories; and will, in time, utterly ruin the trade, if not prevented. It is therefore proposed and desired, that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49°, except on the coast of Labrador; unless this is done, the Company's factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved." This shows that the Company there sought to establish an arbitrary boundary, and that the object of it was to secure the fur trade from the French.

The English Commissioners made the demand to have limits established according to the prayer of the Hudson's Bay Company, and for the giving up the new fort erected by the French; adding a demand that the French should make no establishments on any of the rivers which discharged themselves into Hudson's Bay; and that the entire course of the navigation of these rivers should be left free to the Company, and to such of the Indians as desired to trade with them.

The precise terms of the instructions to the Commissioners hardly seem to have contemplated the latter part of the demand, for they (the instructions of 3rd September, 1719) merely designate the boundaries beyond which the French and English respectively are not to cross. They contain this passage, however: "But you are to take especial care in wording such articles as shall be agreed upon with the Commissioners of His Most Chris-

tian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only."

Colonel Bladen, on the 7th November, 1719, wrote to the Lords of Trade that the English Commissioners would that day deliver in the demand, and that he foresaw "some difficulty in the execution of this affair, there being at least the difference of two degrees between the last French maps and that which the Company delivered us, as your Lordship will perceive by the carte I send you herewith."

Colonel Bladen was right. After receiving the English demands, the French Commissioners, the Maréchál d'Estrées and the Abbé Dubois, never met the English Commissioners again, and all the instances of the English Ambassadors failed to procure a renewal of the conferences.

The Company were again called upon, on the 25th July, 1750, to lay before the Lords of Trade an account of the limits and boundaries of the territory granted to them. They replied, among other things, that the said Straits and Bay "are now so well known, that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered; and the limits or boundaries of the lands and countries lying round the same, comprised, as your memorialists conceive, in the same grant, are as follows, that is to say: all the lands lying on the east side or coast of the said Bay, and extending from the Bay easward to the Atlantic Ocean and Davis' Strait, and the line hereafter mentioned as the east and south-eastern boundaries of the said Company's territories; and towards the north, all the lands that lie at the north end, or on the north side or coast of the said Bay, and extending from the Bay northwards to the utmost limits of the lands; then towards the North Pole; but where or how these lands terminate is hitherto unknown. And towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the said Bay westward to the utmost limits of those lands; but where or how these lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea, and towards the south," they propose the line already set out by them, before and soon after the Treaty of Utrecht stating that the Commissioners under that treaty were never able to bring the settlement of the said limits to a final conclusion; but they urged that the limits of the territories granted to them, and of the places appertaining to the French, should be settled upon the footing above mentioned.

Evidence of Mr. William McD. Dawson, before Committee of the Legislative Assembly of Canada, 8th June, 1857.*

I am the head of the Woods and Forests Branch of the Crown Land Department, and reside in Toronto; I never had any difficulty or quarrel with any one connected with the Hudson's Bay Company.

Q.—Have you particularly studied the titles under which the Hudson's Bay Company claim certain rights of soil, jurisdiction and trade, on this continent?

A.—I have made this subject a particular object of study for many years, and have omitted no opportunity of acquiring information upon it, and although with more time than I could devote to it, and a more extended research, much additional information could be obtained, I believe that it would only tend to fill up details, and strengthen and confirm the results of the investigation I have already made.

Q.—Will you state to the Committee the result of your investigation?

A.—The result of my investigation has been to demonstrate that in the Red River and Saskatchewan countries, the Hudson's Bay Company have no right or title whatever, except what they have in common with other British subjects. Wherever they have any possession or occupancy there they are simply squatters, the same as they are at Fort William, La Cloche, Lake Nipissing, or any of their other posts in Canada.

The Governmental attributes they claim in that country are a fiction, and their exercise a palpable infraction of law.

---

* Sess. Papers, Can., 1857, Vol. 15, No. 17.

I am no enemy to the Hudson's Bay Company, nor to any individual connected with it, and I think that there are, at the present day, extenuating circumstances to justify a great degree of forbearance towards them, when their position comes to be dealt with either judicially or legislatively.

Illegal as it undoubtedly is, their present position is a sort of moral necessity with them. The first attempt of the Company, under Lord Selkirk's régime, to assume that position, was no doubt a monstrous usurpation, but it was defeated, though not till it had caused much bloodshed.

The Hudson's Bay Company and the Canadian traders (North-West Company) afterwards amalgamated, and then, in pursuance of a policy most dexterously planned and executed, carried the trade away back into the interior, from the very shores of the lakes and rivers adjoining the settlements of Canada, and took it round by Hudson's Bay to keep it out of view, to lessen the chances of a new opposition springing up.

They also gave out that it was their country—a fiction which the license of exclusive trade for the Indian territories helped to maintain—and they industriously published and circulated maps of it, as such, which being copied into other maps and geographical works, strengthened the delusion till it became very general indeed.

When, therefore, by this means they had been left alone in these remote territories, without any intercourse with the organized tribunals or legitimate government of the country—an intercourse which their monetary interests forbade them to seek—it became a sort of necessity for them to establish a jurisdiction of their own.

It is true that they have gone to an extreme in this matter which it would be difficult to excuse; but in such a case it is hard to take the first step and be able to stop afterwards, more particularly when it consists in a total antagonism to existing law, or rather in assuming to themselves the functions of constituted authorities where they legally possess only the right of subjects and traders, in common with the rest of the community.

But having once assumed and exercised such powers, and thereby made themselves amenable to the laws of the country, it is not to be wondered at that they had sought to justify it on the pretence that they possess those powers of government which, doubtful at best, even in those localities where they have some show of title, are without the least foundation on the banks of the Saskatchewan or Red Rivers.

In thus palliating the tenacity with which the Hudson's Bay Company cling to their fictitious title, I may be accused of being their apologist, but I am so only to the extent that, at the present day, their position has become a necessity; for, in so far as they have affected the rights of others, they have rendered themselves liable to the most serious consequences, should any party aggrieved see fit to appeal to the legal tribunals of the country, and it is but natural to suppose that they will endeavour to maintain the fiction long enough to enable them to effect a compromise.

Any number of individuals might associate themselves together for mining, hunting, or agriculture, say at Lake Nipissing or on Anticosti, and finding no legal tribunals there, or within their reach, they might establish a jurisdiction of their own and execute their judgments. Circumstances may be imagined in which such a course, if resulting from the necessity of their position, might be morally right though legally wrong, but nothing short of an act of indemnity could save them from the consequences if pursued at law, by those whose rights they had affected.

Such is exactly the position of the Hudson's Bay Company at the Red River, and for the judgments they have rendered there they are undoubtedly amenable to be judged by the legally constituted tribunals of this country; and those whom they have condemned or punished, or whose rights or interests they have adjudicated upon can certainly obtain redress. And to this extent I would be their advocate, that in so far as their assumption of jurisdiction has been, in a manner, a necessity resulting from the Acts of former years, the Legislature should pass an Act of indemnity to shield them from the consequences—the circumstances to be first investigated, however, by a commission appointed by the Government for that purpose.

It may seem presumptuous in me to put the case so strongly in opposition to the general view of their territorial rights; but it is not a matter of opinion—it is a matter

of fact. I could have no hesitation to state as a fact, that the County of York and the District of Montreal are not portions of the Company's Territory; but the fact that the Red River and Saskatchewan are not in their Territory is just as strong and absolute, and the circumstance that the one happens to be better known than the other does not alter the fact in the one case more than the other.

But the generally received view of the subject is but of recent date, and simply the result of the circumstance that no one in particular has taken any interest in denying it. It is only since the union of the Companies in 1821, that there has been no obstacle to the continuous imposition of the Company's views upon the public till they ultimately became rather unopposed than accepted; and in denying their title now (on the Saskatchewan and Red River), I am simply in accord with the highest authorities whose province it has been to treat the question judicially.

It must be remembered that the Company did not attempt to even enter upon these countries until one hundred and four years after the date of their charter, viz.: in 1774, and that they then did so not as taking possession under their charter, but only to participate in a traffic then in the hands of British subjects trading from Canada, in virtue of the conquest or cession of the country, through which and not in virtue of their charter, the Company also had, of course, a right to trade as British subjects.

A rivalry having been kept up for many years in the trade, and the absurd construction of the charter now contended for having been *invented*, the attempt to exercise the powers claimed was made by the Company through Lord Selkirk, first, theoretically, about the years 1811–12, and practically, about 1814, by warning off the North-West Company and obstructing the channels of their trade; and the result was a great deal of strife and bloodshed. In the course of this strife various appeals were made to the Provincial and Imperial Governments, and to the legal tribunals, and in every instance the decisions were directly or constructively adverse to the pretensions of the Hudson's Bay Company.

In a despatch to the Governor-General from Earl Bathurst, by order of His Royal Highness the Prince Regent, under date 6th February, 1817, I find the following instructions in relation to these events:—

"You will also require under similar penalties the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and who were possessed of them previous to the recent disputes between the two Companies.

"*You will also require the removal of any blockade or impediment by which any party may have attempted to prevent or interrupt the free passage of traders or others of His Majesty's subjects or the natives of the country with their merchandise, furs, provisions, and other effects, throughout the lakes, rivers, roads and every other usual route or communication heretofore used for the purposes of the fur trade in the interior of North America, and the full and free permission for all persons to pursue their usual and accustomed trade without hindrance or molestation.*"

And in conclusion this object is again peremptorily insisted on, viz.: "the mutual restoration of all property captured during these disputes, and the freedom of trade and intercourse with the Indians, until the trials now pending can be brought to a judicial decision, and the great question at issue with respect to the rights of the two Companies shall be definitely settled."

The trials then pending, to which the above allusion has reference, were those instituted by Lord Selkirk against the partners and employees of the North-West Company, who had resisted the pretensions of the Hudson's Bay Company, and in consequence of which a battle was fought on the Frog Plains, at the Red River, in which some twenty of the Hudson's Bay people were killed, including the "Governor," as they styled their chief officer. These trials were for murder (some of the parties as principals, and some as accessories), for arson, robbery (stealing cannon), and other high misdemeanours, and were held in this City [Toronto], then the Town of York, in October, 1818, and resulted in the acquittal of all the parties on all the charges, though it was not denied that some

of them had been in the battle, in which, however, they contended that they were in defence of their just rights.

These trials were held under the Canada Jurisdiction Act (43 Geo. III., cap. 138), by authority of a commission from Lower Canada ; but the jurisdiction under that Act being questioned on the ground that the Frog Plains were in Upper Canada, and, therefore, not in the territories affected by the Act, the Court was so doubtful on the question of boundary that the charge to the jury directed that in case of finding the prisoners guilty, they should return a special verdict, setting forth that "they could not see from any evidence before them, what were the limits of Upper Canada." The Attorney-General was unable to define these limits, but appealed to the Court to decide, as they were "deducible from Treaties, Acts of Parliament, and Proclamations, etc." And the judgment of the Court was as above stated, the following occurring in the charge of the Chief Justice :—

"Mr. Attorney-General has put in evidence the latitude and longitude of the Frog Plains, but he does not put in evidence whether this latitude and longitude be without or within the boundaries of Upper Canada, and *I do not know whether from 90° to 100° or 150° form the western limit of Upper Canada.*"

In other words, the Court could not affirm that Upper Canada had any western limit on this side of the Pacific ; and the Court was right ; its westerly limit never had been assigned, and absolute evidence of the very nature which the Attorney-General (now Chief Justice, Sir J. B. Robinson) admitted would be proof upon the subject, existed, so far as to prove that the Province extended beyond the Lake of the Woods, without determining how far beyond ; but it was not his duty to quote it as he was prosecuting for a conviction as directed by a special commission from Lower Canada under a particular Act. An acquittal, however, rendered any special verdict unnecessary, and the question was not, therefore, further tried on these cases.

I must remark, however, that the question raised was solely whether the scene of the outrage at Red River was in Canada or the Indian territory, not whether it was in Canada or the Hudson's Bay Company's territory ; the latter alternative was not even entertained, having been almost entirely ignored on the trials as too manifestly absurd to make any legal fight upon at all. In short, the case for the defence was based on a justification of resistance to the assumed authority of the Company whose preposterous pretensions on the Red River with "Governors, Sheriffs, etc.," were treated with ridicule ; without, however, detracting from the individuals, "Governor" Semple, who was killed, or his predecessor, McDonell, who were worthy of the highest respect, though like many others, imposed upon in the first instance by the specious pretences of the Company and Lord Selkirk.

Other actions and trials took place in Upper Canada, all of which so far as I have been able to trace them, were adverse to the Hudson's Bay Company. In February, 1819, in this city, William Smith, Under Sheriff of the then Western District, obtained £500 damages against Lord Selkirk, then at the head of a large armed force, for resisting him in the execution of a writ of restitution founded upon a verdict obtained at Sandwich in 1816, and resistance also to a warrant for his Lordship's arrest.

At the same time Daniel McKenzie obtained £1,500 damages for forcible detention, etc., by Lord Selkirk.

Criminal proceedings were also instituted and a bill of indictment found against Lord Selkirk himself and the leaders of his party, for their illegal transactions in the Western Territories ; but I have not yet been able to trace up the result of this case, and no doubt much valuable information could be obtained by some one having more time than I have had to hunt up the records of these proceedings.

The latter trials, I believe, were in the ordinary course of procedure of Upper Canada, and not under the Special Act for the Indian Territories, etc., and the proceedings taken extended to transactions which occurred far within the territories drained by waters discharging into Lake Winnipeg.

Having shown the views of the judicial authorities of Upper Canada, I would advert for a moment to those of Lower Canada.

In May, 1818, Charles De Reinhard was tried at Quebec for murder committed in

1816 on the River Winnipeg, under the Canada Jurisdiction Act. Exception was taken to the Jurisdiction of the Court, on the ground that the locality was not on the Indian Territory, but within the limits of Upper Canada. The Court overruled the objection, and decided that the westerly boundary of Upper Canada was a line on the meridian of 88° 50′ west longitude from London. I hardly think that any surveyor, geographer or delineator of boundaries of any experience or scientific attainments would concur in that decision.

The question would be too long, however, to discuss now, and I shall only say that it was based on the assumption that, of the territory previously belonging to, and acquired from France, in 1763, only a part was organized as the Province of Quebec, and that the two Provinces of Canada, after the division, were confined to the same limits provided for the former by the Act of 1774. The Court, the Attorney-General and the Counsel for the prisoner, alike concurred in the fact that the River Winnipeg was a part of the country previously belonging to France and ceded by the Treaty of Paris in 1763, and at no stage of the proceedings was the question of its being a part of the Hudson's Bay Company's Territories for one moment entertained.

De Reinhard was found guilty and sentenced to death, but although the Court refused to re-consider its decision, yet the reasoning of Messrs. Stuart and Vallière was so clear that the Judges deemed it expedient that the execution should be delayed till the decision of the Imperial Government could be had upon the question of Jurisdiction.

The actual reasons given by the Imperial Government I have not been able to get at, but I know that when the decision was given, the prisoner was released, and that the question submitted was that of Jurisdiction, as above stated.

I must here remark, however, that notwithstanding the able and convincing arguments of Messrs. Stuart and Vallière, they omitted one point which the Court would have been obliged, by its own admissions, to have accepted as conclusive against the judgment it gave. The decision given was based upon the technical construction put by the Court upon the actual wording of an Act of Parliament, but it was admitted (by the Court) that the country to the West only "came into the possession of the British Crown at the treaty of Paris in 1763," and it was also admitted that the King could, by "*an Act of Sovereign Authority*," have placed that country under the Government of Canada. It was merely denied that he did so, not asserted that he could not. The counsel for the prisoner did not chance to come upon the Commissions of the Governors, or they would have found that there had been such an "*Act of Sovereign Authority*," distinctly describing that country to the West of the Lake of the Woods as attached to the Government of Canada, and the Court, by its own admission, must have been bound by it.

I may also remark that the decision of the Court at Quebec would have made the westerly limit of Upper Canada a long way east of the United States boundary at Lake Superior, leaving out the shores of the Lake (where we are now selling mining lands) and its westerly tributaries, and has, therefore, nothing in common with the boundary designated for us by the Hudson's Bay Company—viz., the water-shed of the St. Lawrence, and for which *there is no earthly authority except themselves.*

On this head I must advert to one other authority, which is of the highest importance at this moment, when troops are about to be sent to the Red River, and who, if they carry with them the erroneous views which of late years have been with some success imposed upon the public by the assiduous promulgation of the Company, may unfortunately be placed in a position of antagonism to the civil power. There were, indeed, some troops there not many years ago, and no such evils as might be apprehended now resulted; but the circumstances are changed; the scenes of an early period may come back if the attempt be made, wholly unsustained by law, to repress a legal right. If such should be the case, it would be unfortunate if Her Majesty's soldiers were found on the wrong side, acting against law, for the subject is now being so well discussed that the people will know their rights, and will appeal to the legal tribunals and the civil powers of the State to sustain them. Better that military rule prevailed entirely, for then the officers would know their duties and their responsibilities. If they go under the impression that they are to be subject to the supposed civil officers of a self-constituted Government which has no legal existence, they may find themselves called upon to enforce behests which are not

law, which are infractions of law ; they may be called upon to subdue resistance to illegal acts to which resistance is a duty and a right ; and if, for acting on these behests, they are ultimately brought before the Courts of Justice, they will find that they have acted under those whose powers will be treated as a nullity, whose civil offices will be held a mockery. This has been so before ; it may be so again, if due precaution be not observed ; and I state it thus strongly now, because the more it is known the less will be the chance of its recurrence.

If proper civil officers, magistrates, etc., were appointed by His Excellency the Governor-General, for the Red River country, to whom alone the troops could look in case of emergency, as vested with authority, the difficulty and danger would be obviated ; for without this there is no authority in that country, by, through, or in any person connected with the Hudson's Bay Company, as such, to which any officer or soldier in Her Majesty's service would be justified in yielding obedience.

To revert to the authority upon this subject I was about to quote. It will be remembered that during the troubles which formerly took place, upon special representations made by Lord Selkirk that he was not safe in proceeding to the Red River settlement, some troops were sent with him, and the instructions given to them by order of His Excellency, Sir Gordon Drummond, are so clear and decisive that no one can mistake their purport. They were as follows :

ADJUTANT-GENERAL'S OFFICE,

Quebec, 17th April, 1816.

SIR :—THE EARL OF SELKIRK having represented to the ADMINISTRATOR IN CHIEF and Commanding General of the Forces that he has reason to apprehend that attempts may be made upon his life, in the course of the journey through the Indian country which he is about to undertake, His Excellency has, in consequence, been pleased to grant his Lordship a military Guard for his personal protection against assassination. This party, which is to consist of two serjeants and twelve Rank and File of the Regiment De Meuron, is placed under your command, and I am commanded to convey to you the positive prohibition of His Excellency the Lieutenant-General commanding the Forces, against the employment of this force for any other purpose than the personal protection of the EARL OF SELKIRK. You are particularly ordered not to engage yourself, or the party under your command, in any disputes which may occur betwixt the EARL OF SELKIRK and his engagés and employés and those of the NORTH-WEST COMPANY, or to take any part or share in any affray which may arise out of such disputes.

By such interference on your part, you would not only be disobeying your instructions, but acting in *direct opposition* to the *wishes and intentions* of the *Government*, to the COUNTENANCE, SUPPORT and PROTECTION of which EACH PARTY has an equal claim.

The EARL OF SELKIRK has engaged to furnish the party under your command with provisions during the time of your absence; you are on no occasion to separate from your party, but to return with his Lordship, and on no account to suffer yourself or any of your detachment to be left at any settlement or post in the Indian country.

These instructions are to be clearly explained to the non-commissioned officers and men in your party.

I have the honour to be, Sir,

Your most obedient, humble servant,

J. HARVEY,
Lt.-Col. D.A.G.

Lieutenant Graffenried,
De Meuron's Regiment.

[These italics and capitals are the same as in the original.]

This is another emphatic declaration that the Government held the Hudson's Bay Company and the Canadian traders as possessed of equal rights, and that His Majesty's

troops at least were not to be used against the one to sustain the ridiculous pretensions of the other.

Notwithstanding the stringency of these instructions, however, Lord Selkirk having a number of the disbanded De Meuron soldiers in his pay, it was difficult for the regulars to resist being led along with them, to enter upon the North-West Company's property, etc., and which involved them in legal difficulties, after their return, from which it was not easy to extricate them.

I have confined myself in the foregoing remarks to the Red River and Saskatchewan countries, which were the principal scenes of the disputes which have heretofore called for action, and it will be seen that the imperial authorities, the military authorities, and the courts of justice have all ignored the pretensions of the Hudson's Bay Company as regards those countries.

The great danger in renewing the Company's lease of the Indian territories, however, would be that they might drop the pretence that the Red River, etc., is covered by their charter, and claim it as part of the Indian territories, a plea which, though erroneous, might be more easily sustained by technicalities, inasmuch as some of the remote parts of Canada, perfectly understood to be such, have, nevertheless, sometimes been designated as the "Indian countries," in official documents.

I have not referred to the validity of the Company's Charter, either to deny or admit it; I merely deny that it has effect on the countries I have spoken of.

In support of this I have quoted more recent authorities, but for a more particular investigation of their title, its extent and origin, I beg to refer to a Report which I wrote for the Commissioner of Crown Lands, some months ago, the substance of which appears in the shape of a Memorandum in the Return to an Address of the Honourable Legislative Assembly, dated 15th March, 1857, for certain papers connected with the Hudson's Bay question. It embodies the views I have entertained for many years, and is the result of much careful study.

Q.—Have you made the early and present boundaries of Canada a particular subject of study; if so, state the result?

A.—The early boundaries of Canada or New France included, I think, the whole of Hudson's Bay, for I find all that part of the country granted to a trading Company by the King of France, in a Charter somewhat similar, but forty-three years earlier than the Charter of the Hudson's Bay Company. I find the country also confirmed by Treaty to France, at St. Germain-en-Laye, thirty-eight years before the last named Charter; but the investigation of this part of the said subject is fully stated in the Memorandum referred to.

I find that from the Treaty of Utrecht, in 1713, to the Treaty of Paris, in 1763, the boundaries between the French possessions in Canada and the British possessions in Hudson's Bay were not defined. The lines claimed by both parties are distinctly laid down on the map lately prepared by Mr. Devine, in the Crown Land Department. Both, it will be seen, give the Red River and Saskatchewan to France, and the line laid down from British authorities is from those least favourable to French pretensions of that period. All the country south of that line is of course what was ceded by France, as Canada, in 1763, and was in her undisputed possession up to that time. There was never any westerly limit assigned to Canada, either before or since the Treaty of Paris. The French claimed to the Pacific, though they never explored the whole way across, which, however, the Canadians (British and French) were the first to effect after the Treaty.

Some British authorities of a more recent date claimed, under the Treaty of Utrecht, from Hudson's Bay to latitude 49° as having been so determined by Commissioners; but no such decision was ever given. I have searched every book I could find upon the subject, and have communicated with those who have searched the best libraries of France and England with the same object, but no authority can be found for such a boundary.

[The rest of the evidence of the witness relates only to the soil and climate of the British territories north and west of Lake Superior to the Pacific.—G. E. L.]

Chief Justice Draper to the Provincial Secretary, dated London, June 12th, 1857.*

(*Extract.*)

Although it certainly appears to me, as a matter of legal inference, that the language of the Statute of 1774 (not varied by the Proclamation of 1791†), leaves no ground for contending that the limits of the Province of Canada extend west of the westernmost head of the Mississippi River—yet it is desirable to have the decision of the Judicial Committee [of the Privy Council] on that point, as well as on the northern boundary; and if, as I confidently hope, the decision gives to Canada a clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim, there would be no obstacle in ascertaining the practicability of communication and laying out lands for settlement on Rainy River and Rainy Lake.

The Governor of the Hudson's Bay Company to the Colonial Secretary.‡

Hudson's Bay House,

18th July, 1857.

Sir,—I have the honour to acknowledge the receipt of your letter of the 15th instant, communicating a passage from the statement you have received from the Law Officers of the Crown, in reference to the question of the geographical extent of the territory granted by the Charter of the Hudson's Bay Company, and suggesting that such question might with great utility, as between the Company and Canada, be made the subject of a *quasi* judicial enquiry, and desiring to be informed whether I think it probable that the Hudson's Bay Company would consent to appear before the Judicial Committee of the Privy Council, in the manner and for the purpose suggested.

I have submitted this communication to my colleagues, the Directors of the Hudson's Bay Company, and as we are desirous to throw no obstacle in the way of settlement of the doubts that have been raised by the people of Canada, as to the extent of the territory to which the Company are entitled under their Charter, we shall be prepared to recommend to our shareholders to concur in the course suggested. At the same time, you will not fail to see that other interests than those of the Company may be involved in the enquiry, as there are many persons, not now members of the Company, who have acquired by grants from the Company, or otherwise, a title to large portions of the land in question.

Assuming, however, that the object of the proposed enquiry is to obtain for Canada land fit for cultivation, and the establishment of agricultural settlers, I would observe, that the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cessions would be a matter of no difficulty between Her Majesty's Government and the Company.

The Board, having in view the present condition of the enquiry before the Committee of the House of Commons, and the agitation which prevails on the question in Canada, are desirous of availing themselves of the opportunity your letter affords, to state clearly, for your information, the principles which will guide them in their future proceedings.

---

* Book of Arbitration Documents, p. 391. It is there stated that the original is in Department of Secretary of State at Ottawa.

† [This Proclamation, as well as the Imperial Order in Council on which it is founded, have these words not contained in the Statute: "including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."—G. E. L.]

‡ Sess. Papers, Can., 1859, Vol. 17, No. 7.

The Board will be ready to bow to any decision which Her Majesty's Government may consider it for the public interests to take with regard to the maintenance or abolition of the exceptional rights and trade of the Hudson's Bay Company, relying confidently on the justice of Her Majesty's Government, and of Parliament, for just compensation to the present stockholders, and a due consideration of the claims of their factors, traders, and servants in the Indian country, if the time shall have arrived in the opinion of Her Majesty's Government for the abolition of the monopoly.

The present holders of the capital of the Company, 274 in number, are of the usual class of persons holding stock in other chartered companies, who have invested their money on the faith of the Company's Charter, and in confidence of the permanent character of their rights and property, and are in general indifferent to any other question in the present discussion than the security of their capital and dividends.

The situation of the factors, traders, and servants of the Company is described in the evidence taken before the Committee. As no change in the condition or settlement of the country could well be carried into effect without their willing co-operation and assistance, their just claims must be considered in any new arrangements to be submitted to Parliament.

As respects the Board of Directors, of which I have the honour to be Chairman, their situation is peculiar, and their future conduct must be guided by the disposition of Her Majesty's Government to support them in the future administration of their affairs. They have been rewarded so far, since the union of the Hudson's Bay and North-West Companies, by the success of their administration, as proved not alone by the results of their trade, but by the condition in which they will leave, if they now retire, the government of the whole Indian Territories entrusted to their care, as well as by the express approbation of every succeeding Secretary of State for the Colonies for the last thirty-seven years.

Looking to the future, they will only consent to undertake the future charge of the Indian Territories, which would devolve upon them on the renewal of the license, on the faith of being firmly supported by Her Majesty's Government in maintaining their present establishments in full efficiency. It would be inexpedient, in their opinion, to enter upon a new and further term of their administration without the fullest and most explicit assurance of that support. The Directors have always considered that the settlement of 1821 was sanctioned by the Government and the Legislature, and the monopoly of the Hudson's Bay Company then re-established and extended, quite as much, if not more, as the best instrument the Government could employ for the administration, security, and peace of the Indian country, as for the advantage of the parties whose interests were united by that settlement. These parties and these interests have been long since replaced by others, and are now represented by the present holders of the stock of the Company.

We do not consider any further legislative measures necessary at present for the government of the Indian Territories. The powers under the Charter have hitherto proved sufficient for the ordinary purposes of administration, and the Government have full powers, under the Act of 1821, to appoint Justices and establish Courts, independent of the Company, when and where they shall think it expedient. All new establishments of this description will create expense, which must be paid by this country or by Canada, as neither the Red River Settlement nor the Indian country have taxable means for the purpose.

We beg to be allowed to add the expression of our opinion, that in whatever arrangements which may now be made for the future government of the country, any mixed authority or combination of agents appointed to act with those of the Company will only weaken an administration which it is essential to strengthen in the present state of affairs.

No competent persons would be found to abandon civilized life to accept such situations, with such salary as will be found reasonable; and if they could be found, the probability is that the want of sufficient occupation will soon engage them in antagonistic discussions with one another, not conducive to the general order or cordiality of the small community whose affairs they will be sent to direct.

The Board is willing to remain in the exercise of its present functions, to concur in any arrangements proposed by Government or Parliament, which will not interfere with or obstruct their power of independent management of the concerns of the Company; and to give assistance and support to any magistrates appointed by the Government in endeavouring to maintain the present undisturbed state of the Indian Territories. But they will decline to undertake a divided administration of carrying on the government of the country, under the exceptional circumstances of the case, unless assured of the same cordial and unhesitating support from Her Majesty's Government which they have hitherto enjoyed.

I have, etc.,

JOHN SHEPHERD,
Governor.

The Right Honourable Henry Labouchere, M.P.

INSTRUCTIONS TO MR. GLADMAN, CHIEF DIRECTOR OF THE PARTY ENGAGED, UNDER AUTHORITY OF THE GOVERNMENT OF CANADA, IN THE EXPLORATION OF THE COUNTRY BETWEEN LAKE SUPERIOR AND THE RED RIVER, AUTHORIZED BY ORDER IN COUNCIL OF 18TH JULY, 1857.*

SECRETARY'S OFFICE,

TORONTO, 22nd July, 1857.

SIR,—I have the honour to acquaint you that, confiding in your integrity, judgment and energy, together with your acquaintance with the Red River Territory, your knowledge of the communication with that country, and with the tribes of Indians which traverse it, His Excellency the Administrator of the Government has been pleased to appoint you to the chief direction and control of the party about to be sent there.

The party organized consists of the following:

Mr. Gladman, Chief Director and Controller of the expedition, and his assistant.

Professor Hind, Geologist and Naturalist, and his assistant.

Mr. Napier, Engineer, with his assistant and staff-men; and Mr. Dawson, Surveyor, with his assistants and chain-men.

Also, such voyageurs or canoe-men as in your judgment may be necessary, the probable number of canoes being assumed at four, with four voyageurs in each; such men to be selected with a view to their being capable of assisting the engineering and surveying branches of the expedition, as axe-men, etc., when required.

The primary object of the expedition is to make a thorough examination of the tract of country between Lake Superior and Red River, by which may be determined the best route for opening a facile communication, through British territory, from that lake to the Red River Settlements, and ultimately to the great tracts of cultivable land beyond them. With this view the following suggestions are offered for your guidance, so far as you will find them practicable, and supported by the topography.

In the first place, after being landed at Fort William, to proceed by the present Hudson's Bay canoe route—by the Kaministiquia River, Dog Lake, Lake of the Thousand Islands, etc.—to Lac la Croix, and thence by Rainy Lake, Lake of the Woods, Winnipeg River to Lake Winnipeg, and up the Red River to Fort Garry.

From Rainy Lake to Lake Winnipeg, the route as at present affords a good navigation for boats of considerable size, with the interruption, however, of some short portages: but from Rainy Lake eastward to Lake Superior the route is very much interrupted, and rendered laborious, tedious and expensive by the great number of portages, some of considerable length, which have to be encountered to avoid the falls and rapids in the ravines and creeks which this route follows.

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

For the establishment of a suitable communication for the important objects aimed at, it is believed that the construction of a road throughout, from some point on Lake Superior, probably either at Fort William or at or near the mouth of the Pigeon River to Rainy Lake, must be undertaken. To ascertain, therefore, at present, by general exploration, what the route for this road should be, whether in the vicinity of the Hudson's Bay route, or by the line of country in which lies the chain of waters from Rainy Lake to the mouth of Pigeon River, this question can obviously be only satisfactorily determined by the difficult portions of both being tested instrumentally; but in either case, as the construction of such road would be a matter of time and much expense, it is considered necessary that the portages, etc., of either of the routes above described should be improved, so as to be made more available and facile, and to be auxiliary to the works of the road by facilitating the transport of men, supplies, etc.

To determine, therefore, the portages to be improved, and the best mode of doing so, and whether the present reaches of canoe or boat navigation may not be further extended by the removal of shoals or the erection of dams, will be points to which you will direct the attention of the engineering and surveying branches of your party.

From Rainy Lake, by Lake of the Woods and Lake Winnipeg, to Fort Garry, as before described, is now comparatively a good water communication, but very circuitous; and should the character of Rat River, which rises at no great distance from the Lake of the Woods, and falls into the Red River above Fort Garry, be found susceptible of its being made a boat channel, a saving probably of 150 miles in length might be effected; or on an exploration of the country through which that river flows, it may be found more desirable to construct a road along it from Red River; and should this be so, the nature of the communication between Red River and Lake Superior, eventually, would be about 100 miles of road from Red River to Lake of the Woods, thence about 140 miles of water communication to the eastern end of Rainy Lake, and from that point a continuous road to Lake Superior of from 160 to 200 miles in length.

When you shall have reached Rainy Lake by the Hudson's Bay canoe or northern route, it is left to your discretion whether you should or not leave the engineering party with sufficient force to return and explore back to Lake Superior, the Southern or Pigeon River route, while you proceed with the surveying party by Lake Winnipeg to Red River, and return by Rat River.

All the members of the party, with the exception of the Geologist and his assistant, are, it is understood, to winter on the expedition if required. The expediency of adopting that course can only be determined by you some time hence; but should you decide upon so doing, you will, of course, take due precautions for the safety and comfort of the party, and for their effective and profitable employment.

As director and leader of the party, you will govern all matters whatsoever connected with the conducting and provisioning of it—the hiring, discharging and payment of men. The lines to be explored, and the water examinations to be made will be determined by you, on consultation with the gentlemen conducting the engineering and surveying branches. You will also decide the times and places for separating the party or parties and for their re-union. The Engineer and Surveyor have been instructed to afford you all the assistance in their power, and have been informed that they are to consider themselves under your guidance and direction. Any occasional additional assistance they may require will be obtained through you, as well as all necessaries whatever; but the conducting of their immediate professional duties will, of course, be regulated by themselves.

At the very outset, it is important that you should regulate the number of fire-arms that you may consider it necessary to take, which it is believed should not exceed six,—one with the Director, one with the Geologist, two with the Engineer, and two with the Surveyor. You will adopt, also, full precautions against any spirits, etc., of any description being carried, except what shall be under your own sole charge and control, and such as you may consider it necessary to have in case of illness.

With regard to the procuring of canoes, camp equipage, medicine, etc., etc., for the expedition, it is not considered necessary, from your experience in such matters, to offer any suggestions further than to draw your attention to some Crimean rations of pressed

vegetables, now in the commissariat store, which occupy but little space, and a small portion of which makes in a short time excellent soup.

In order further to give effect to your control and authority, a commission of magistracy will be conferred upon you.

About the time of your reaching Rainy Lake, or at such period as you may deem proper, you will send a messenger with despatches, reporting upon your progress, etc., etc., and whether you find it necessary or desirable to winter in the territory, etc.

Finally, you will impress upon each member of your party that no communication or information whatsoever, with regard to the progress or results of the expedition, are to be transmitted, by writing or otherwise, except to the Honourable Provincial Secretary.

The *ad interim* reports of the Geologist, Engineer, and Surveyor, you will enclose with your own, and transmit by the messenger above adverted to.

You will also peremptorily require that the weight of all personal effects taken by each of the party, including that of the bag or leathern valise containing them, shall not exceed ninety pounds.

E. Parent,
Assistant Provincial Secretary.

George Gladman, Esquire,
Port Hope, U. C.

[Here follow special instructions to Professor Hind, Mr. Napier, and Mr. Dawson respectively, together with voluminous reports showing that the objects of the expedition had been successfully attained. The papers also show that the explorations were continued and extended in the following year under Messrs. Hind and Dawson. *See* Sess. Papers, 1858, Vol. 16, No. 3. See also the letters to and from Sir Geo. Simpson, *post*, under dates 14th and 23rd April, 1858, respectively.]

Final Report of Chief Justice Draper respecting his Mission to England.*

To His Excellency the Right Honourable Sir Edmund Walker Head, Baronet, Governor-General, etc.

The following report is respectfully added to the various despatches and communications heretofore written by me† on the subject of my mission to England, having been drawn up in the hope of presenting a connected statement of the proceedings—while for elucidation and fuller details, I beg permission to refer your Excellency to all that has been previously submitted by me.

The instructions of the 20th February, 1857, with which I was honoured, referred to the leading subjects which subsequently engaged attention; among them are the following:

The duty of attending on the Parliamentary Committee, of watching over the interests of Canada by correcting erroneous impressions, and by bringing forward any claims of a legal or equitable kind which the Province might possess on account of its territorial position or past history.

This duty was limited by an express restriction to conclude no negotiation and assent to no definite plan of settlement affecting Canada, without reporting the particulars of the same, and the views entertained by me thereon.

The expediency of marking out the limits between the British possessions and the United States, was strongly pointed out, from the importance of securing the North-West territory against sudden and unauthorized intrusion, as well as of protecting the frontier

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

†[With the exception of the extract from his letter of 12th June, 1857, which is given at p. 47, *ante*, none of these previous despatches and communications appear to be in print.—G. E. L.]

of the lands above Lake Superior, and about the Red River, and thence to the Pacific, so as effectually to secure them against violent seizure and irregular settlement, until the advancing tide of immigration from Canada and the United Kingdom might fairly flow into them, and occupy them as subjects of the Queen, and on behalf of the British Empire.

That any renewal of a license of occupation (if determined on at all) or any recognition of rights in the Hudson's Bay Company should be guarded by such stipulations as would prevent interference on their part with the fair and legitimate occupation of tracts adapted for settlement.

The importance of Vancouver's Island, as the key to all British North America on the side of the Pacific, was alluded to as being too self-evident to require any advocacy.

I lost no time after the receipt of those instructions in setting off for Europe. On my arrival in London, on the afternoon of the 9th of March, I found that, owing to the vote on the Chinese war, Parliament was about to be dissolved, and that the Committee on the Hudson's Bay affairs and territory had held its last sitting on that day, and would merely report the evidence they had taken, the enquiry being incomplete and insufficient as the foundation of any report.

I certainly felt great momentary disappointment since I saw that my stay in London would be thereby greatly prolonged. But a little reflection, and some information which I obtained as to the course the enquiry had taken, soon brought me to view the delay as likely to be an advantage, by affording time that might be put to a very profitable use.

My first interview with the Right Honourable the Secretary of State for the Colonies gave no reason to apprehend any indisposition on his part to take a just view of the interests of Canada in the matter. His language, though general, was favourable, and I thought I could safely infer that any obstacles that might arise would not originate with him, however he might be affected by pressure and urgency from other quarters.

Enquiries in other places, together with a perusal of the evidence taken before the Committee (which Mr. Labouchere promptly communicated to me), led me to the conclusion that the only party desirous of maintaining things in their present position was the Hudson's Bay Company, though, as I afterwards ascertained more distinctly, very different opinions were entertained as to the course which it would be most wise to adopt in the future government of that portion of British territory.

My first duty, therefore, appeared to be to take steps with a view to meet the resistance which the Hudson's Bay Company were opposing to any change. This resistance took, as I thought, two forms—one, resting generally on the rights claimed under their charter from Charles II.; the other more particularly directed against the claims of this Province, by setting up an alleged impossibility arising from geographical and physical causes, to the Government of the territory being administered by Canada. The first was obviously to be met by an examination of the foundation on which they relied, the second by endeavouring to obtain more accurate knowledge of the formation and accessibility of the county lying between Lake Superior and Fort Garry, and by postponing any final arrangement until this should be fully investigated.

I was aware of the correspondence which took place in 1850 bearing upon the first of these points, and that the late Sir John Jervis (afterwards Chief Justice of the Court of Common Pleas) and Sir John Romily (now Master of the Rolls) had reported their opinion that "having regard to the powers in respect of territory, trade, taxation, and government, claimed by the Hudson's Bay Company," the rights so claimed properly belonged to that Company. They had, however, accompanied this opinion with their advice that the questions should be referred to a competent legal tribunal for consideration and decision, and they suggested the Judicial Committee of the Privy Council as the tribunal best fitted for the discussion of the case. Her Majesty's Government adopted the advice, but, as they refused to have the proceedings carried on at the public expense, the matter was then dropped.

Impressed with the idea that a similar reference would receive the approval of the Government, and that it was on every account desirable that the validity of these claims should be submitted to the test of judicial investigation, I applied for and obtained leave to make searches among the public documents and State papers, where I hoped I should obtain some information respecting the original granting of the Charter,

as well as some reliable account of the construction put upon it in times when no such questions had arisen as now presented themselves. Several points with respect to the Hudson's Bay Company's rights and claims, on which doubts had been suggested, might probably be elucidated by this enquiry, and materials might be found to narrow the pretensions set up by them.

But while engaging in this research, which proved much more long and laborious than I at first supposed, I felt it my duty, at an early date after my arrival in London, and as soon indeed as I had sufficiently reflected on the information which I could immediately gather, to submit for the consideration of Your Excellency such views as up to that time impressed themselves on my mind on the subject, in order that Your Excellency in Council might be in a situation to exercise your judgment upon them.

The enquiry before the Committee had taken a much wider range than fell within the limit of my instructions, but the information elicited in regard to the Indians, and the trade carried on by them with the Hudson's Bay Company, had a very important though a collateral bearing upon the preservation of British authority within, and the settling and government of the North-West Territory. In my despatch of the 20th March, I pointed out the course which the evidence had so far taken, as well as some of the views and reflections to which it was calculated to give rise.

There seemed to be an almost settled conclusion that a change had become necessary —that the Hudson's Bay Company could not be permitted to maintain a territorial monopoly for their own benefit, to the exclusion of the rest of the Queen's subjects from the occupation and cultivation of such lands as were fitted for agricultural purposes; and with regard to Vancouver's Island, its value, in a political point of view, seemed so well understood, that there appeared no room for doubt that it was deemed inexpedient to suffer it to continue in the hands and under the control of that corporation.

As to the mainland, I gathered that the impression entertained by Her Majesty's Government was in favour of placing such portion of it as was fitted for settlement, to the west of the Rocky Mountains, under the control of the Colonial Government proposed to be established at Vancouver's Island; while as to such portion of it similarly fitted for settlement as lay to the eastward of that mountainous chain, there was a readiness to meet the views of Canada—by placing it under the control of the Government of this Province, if the practicability of opening communication between Lake Superior and Red River, and so to connect this more distant territory with Canada, under one general Administration, were established, also subject to the rights (whatever they were) of the Hudson's Bay Company—and to an adjustment of compensation for that which it might be found necessary to take from them.

Although conflicting opinions existed as to the mode in which the settlement and administration of affairs in this territory should be effected, the prevalent, as I have already stated, was in favour of an entire change of system, and I could anticipate an enquiry whether Canada would be disposed at once to assume the charge of settling and governing and (except as to foreign aggression) of maintaining peace in the territory indicated, accepting the burden of adjusting such claims as might appear on enquiry to be well founded, and if not, what other arrangements would be suggested in contemplation of its ultimate cession to her.

I endeavoured to point out to Your Excellency, in my despatch of the 27th March, the question which I deemed of the most prominent importance, and I discussed therein, at some length, some of the leading considerations involved in them, and I submitted such conclusions as (so far as I could then perceive) I thought it would be for the interests of the Province to arrive at. As to the validity of the claims of the Hudson's Bay Company under their charter, I assumed the Government at home entertained the same views as to the propriety of a reference to the Judicial Committee of the Privy Council as had been expressed in 1850.

During the residue of the session of Parliament, and from the dissolution until after the elections, I had but little opportunity of communicating with any of the authorities on these points. I took, however, the earliest convenient occasion to ascertain, as well at the Colonial Office as elsewhere, what opinions prevailed with regard to them, and was surprised and disappointed to find that doubts had been suggested and difficulties

raised to following out the course previously suggested by the law advisers of the Crown, and sanctioned by Earl Grey. It was intimated to me, that possibly the Judicial Committee might decline pronouncing any opinion upon the validity of the claims of the Company, when no parties were before them, whose right would be bound by their decision, and that it was more fitting the judgment should be given in a case where the rights of parties were in actual dispute upon which their decision would be strictly judicial and binding. I could perceive plainly that the difficulties, which it was supposed might be met with in the Judicial Committee, must have been suggested since the correspondence of 1850, and that they were deemed of some importance at the Colonial Office. A brief interview with Sir R. Bethel, the Attorney-General, led me to believe that he thought, that after so long an enjoyment on the part of the Hudson's Bay Company, it was not by the Crown that the validity of their charter should be brought into discussion. From all this, I drew the conclusion, that, unless I could raise a question of legal right in which the Province of Canada had a direct interest, there was very little prospect of any reference to the Judicial Committee, while I felt a very strong conviction that no other judgment would be satisfactory on the validity of the Company's claims, or if adverse to the claims of the Province (which, however, I did not believe possible) would receive a respectful submission.

With this impression, I considered that vague and indefinite as the southern boundary of the territory mentioned in the Company's charter is, the limits of the Province of Canada in that part are made dependent on it. I observed also, that this same boundary had been a matter of lengthened dispute between Great Britain and France, finishing only by the treaty of 1763. That at various periods subsequently to 1670, and to 1750, the Hudson's Bay Company had been called upon to point out the extent of their territorial claims under the charter, and to define the boundary which they claimed, and that on no one occasion during all that period had they advanced the claim they now insist upon, namely, that the charter gave them the ownership of all lands, the water from which flows into the Hudson's Bay or Straits, and therefore extending as far as the head waters of the Red River, and east and west of that stream to the sources of its tributaries, though the Ashburton treaty has, of course, disposed of so much of that claim as lies south of the 49th parallel of latitude. And I prepared a memorandum on the subject, which I forwarded to the Secretary of State for the Colonies in a letter, a copy of which letter and its enclosure was transmitted to Your Excellency in my despatch of the 8th of May, 1857.

My object was to place the question on a footing by which the Crown would be called upon to determine the boundary between the Colony and Rupert's Land, as it is styled in the charter of 1670, and, for its own information and guidance, would find it desirable, I might almost say indispensable, to obtain the advice and opinion of the Judicial Committee of the Privy Council. Of the right of the Crown to take this course under the Imperial statute 3 and 4 William IV., there can, I apprehend, be no doubt. It is treated as clear by Mr. MacQueen, in his "Practice of the House of Lords and Privy Council," and on such a reference, I presume, the Judicial Committee would simply make a report, and not pronounce a judgment; upon which report Her Majesty might issue an Order in Council, establishing the boundaries, in virtue of her prerogative royal. Such a declaration would, I venture to submit, meet with respect and obedience in all Her Majesty's Courts of Justice. But if there was a shadow of doubt of the full authority of such an order, a declaratory Act of Parliament, founded upon it, or upon the report of the Judicial Committee, would set the question at rest forever. I thought that counsel for the Province, as well as for the Hudson's Bay Company, would be heard, and I did not see how it would be possible to exclude the former from contesting the validity of the charter, when it was to be used for the purpose of limiting Canada on the north.

Parliament was opened on the 8th of May, and a Committee of the House of Commons was named to continue the enquiry. Before that Committee met, I received, (the 12th May) the minute of Your Excellency in Council, of the 27th April preceding, which expressed a fixed opinion that no immediate charge should be taken of any territory in a form which would throw upon the Province the cost of administration and

defence, while in an unsettled state, until the sanction of the Provincial Legislature was obtained, and that in the meantime I should see—"1st. That Canada should be secured the reversion of such territory north and west of Lake Superior as experience may show to be fit for settlement, contingent on the opening of such communication from Canada as may prove sufficient to allow their future union with the Province. 2nd. That immediate steps should be taken by Her Majesty's Government to prevent the absorption of the territory west of Lake Superior by unauthorized emigration from the United States. 3rd. That every facility should be secured for enabling Canada to explore and survey the territory between Lake Superior and the Rocky Mountains—and if the Provincial Legislature should think fit to provide the means of so doing, no obstacle should be thrown in the way of the constructing of roads or the improvement of water communication, or the promotion of settlement beyond the line supposed to separate the territory of the Hudson's Bay Company from that of Canada."

The first meeting of the Committee was on the 15th May, when no business except the appointment of the Chairman was transacted. I submitted the names of several witnesses whose evidence I thought would be found valuable; and I received an unofficial intimation of the intention of the Committee to call me before them as a witness. I saw at once the embarrassing position in which this would place me, for it must have been well known that I had no personal knowledge of the territory, and I was therefore certain that my opinions and not my knowledge must form the subject of examination, and that questions might very easily be put to me, which it would be difficult, bearing in mind the restrictive character of my instructions, to answer. I almost determined—if the matter were in any way left open to me, as a matter within my own discretion—not to appear as a witness, though I felt such a course might be open to great misconstruction, and might create impressions unfavourable to the interests of the Province. However, at the meeting of the Committee of 21st May, the chairman expressed his opinion that I should be called before them, in which all present apparently concurred, and it was formally stated to me that the Committee desired my attendance at their next meeting. I took an opportunity, as soon as the Committee broke up, of stating to the Chairman my objections; but (if he felt there was any force in them) he left me no reason to doubt that in his opinion I should comply with the expressed desire of the Committee.

In the meantime, however, I had learned, through the public press, that an expedition had been set on foot to conduct a geographical survey through a part of the territory in question. I addressed a letter on this subject to the Secretary of State for the Colonies (16th May, 1857—separate, No. 5), a copy of which I enclosed to Your Excellency in my despatch of the 21st May. To this I received a reply from Mr. Merivale, one of the Under-Secretaries of State, bearing date the 25th May, and on the 27th May I received a reply from Mr. Fortescue, the Parliamentary Under-Secretary of State for the Colonies, in reply to my letter of the 6th May, copies of which were transmitted by me to Canada, in my despatch of the 29th of the same month. (Separate, No. 6).

On the 28th day of May I was examined before the Committee. I took particular care to have it understood that I had no instructions to appear before them as a witness. Examined repeatedly as to my individual opinions on the subjects of enquiry, I could not avoid stating what I sincerely thought; but while I felt bound to reply without reserve, I was solicitous to impress that I stood alone responsible for such views, that I pretended no authority to advance them in the name of the Province, and that they were in some instances opposed to what I believed many people in the Province thought.

I addressed a reply on the 5th June to the letter which I had received from Mr. Fortescue on the subject of the suggested reference to the Judicial Committee of the Privy Council, and in this letter I took occasion to present, as succinctly as possible, the points which I thought it most material for the interests of Canada should be treated in the Report of the Committee, and disposed of by Parliament. I felt the more imperatively called upon to take this step at once, lest any answer of mine in the course of a lengthened examination should give rise to misapprehension as regarded the claims of the Province. A copy of this letter was sent by me to the Provincial Secretary in my

despatch of the 5th of June. I received on the evening of the 6th of June a note from Mr. Labouchere's private secretary, respecting my official letter of the 5th of June, to which I replied on the following Monday, and I forwarded copies of those two notes in my despatch to the Provincial Secretary of the 12th of June.

To this despatch I beg to make especial reference. It contains a *resumé* of my reasons for pressing the reference to the Judicial Committee; a statement of the boundaries, which, for the present, and without reference to the legal adjudication, I was of opinion might answer; as also a recapitulation of some of the proposals made by me for dealing with the questions before the Committee and the Government.

On the 3rd of July I received a copy of the evidence taken before the Select Committee of the House of Assembly, which I immediately transmitted to Mr. Labouchere, as chairman of the Committee. It is printed in the Appendix to the Report of that Committee.

In the meantime (as I learned through private channels of information) the Attorney and Solicitor-Generals had been called upon to report their opinion whether the Crown could lawfully or constitutionally raise for legal decision all or either of the following questions: 1. The validity, at the present day, of the charter of the Hudson's Bay Company; 2. The validity of the several claims of territorial right, of government, of exclusive trade and taxation claimed by that Company; 3. The geographical extent of this territorial claim, supposing it to be well founded to any extent; and, if the Crown could do so, then to state the proper steps to be taken, and the proper tribunal to be resorted to, and whether the Crown should act on behalf of the local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way; and if the Crown could not properly so act, whether they saw any objections to the questions being raised by the local Government of Canada, acting independently of the Crown, or by some private party, in the manner suggested by the law officers in 1850—the Crown undertaking to bear the expense of the proceedings.

I was on the 11th of July favoured by Mr. Labouchere with a copy of the report in reply, but the communication to me was marked "Private and Confidential" (8th July, 1857). A few days prior to its receipt, however, I addressed a letter to Mr. Labouchere, again pressing for a reference and decision on the subject of boundaries. A copy of this letter was transmitted by me to the Provincial Secretary on the 10th of July.

In reference to the opinion of the law advisers of the Crown, I cannot abstain from remarking that it does not appear to me to meet the questions submitted. The general question put was, whether the Crown could lawfully or constitutionally raise for legal decision,—1. The validity of the charter at the present day. 2. The validity of the several claims of territorial right, of government, exclusive trade and taxation, insisted on by the Company. 3. The geographical extent of the territorial claim, supposing it to be well founded to any extent.

1. As to the validity of the charter. The answer in fact is (if I do not misunderstand it), the Crown cannot justly raise this question, because, taking into consideration the enjoyment that has been had under the charter, and the recognition made of the right of the Company under various Acts, the judgment of any tribunal ought to be in favour of upholding it, although, if principles which govern a charter of recent date were applied, it must be deemed invalid. With great submission, this appears to me to savour much more of an opinion on what should be a result of a reference, than an opinion on the power of the Crown to refer. And, if this be the true sense of the answer, then it is difficult to avoid the reflection that such a determination, coming from a high and impartial tribunal, would carry more weight and conviction with it than an opinion, which, if followed, prevents such an adjudication being obtained. And the adoption of that opinion by the Government becomes virtually an assertion by the Government of the validity of the charter—while the argument, resting upon long enjoyment, and parliamentary recognition, seems almost to involve the admission of its invalidity.

2. The answer to the second branch of the inquiry is open, as appears to me, to similar objection. If it be admitted—and the opinion given involves the admission—that rights of government, taxation, exclusive administration of justice, or exclusive trade, cannot be legally insisted upon by the Hudson's Bay Company, as having been legally

granted by the Crown; and if, as is notoriously the fact, the Hudson's Bay Company have assumed and asserted all these rights, the answer to the question put ought, I humbly conceive, to have been that the Crown could legally and constitutionally raise this question for legal decision, instead of anticipating the judgment by an opinion that the charter should not be deemed invalid, because it professes to grant those powers, inasmuch as to a limited extent those powers may be lawfully used.

I cannot say the result of the reference, so far, was any matter of surprise to me. On whatever grounds the opinion might be rested, I had, as I have already stated, satisfied myself that there would be no facility afforded for raising either of these questions, and I was the more fully satisfied that I had taken a right course in submitting a proposition which it was impossible to negative on any such reasoning as the report contains in regard to the first two questions.

Even on that proposition, however, the opinion given hardly appears to me to afford a full answer.

I concede fully that the Crown could not, of its inherent authority, and by any mere command, bring the Province of Canada and the Hudson's Bay Company, as two contending parties, before the Judicial Committee of the Privy Council to submit their respective claims for final decision. For this purpose the consent of both parties would be indispensable. But I fail to perceive, and on this point the opinion throws no light, that the Crown could not obtain the opinion and advice of the Judicial Committee upon all the existing facts as to the boundaries between Canada and the territories of the Hudson's Bay Company, supposing their claim "to be well founded to any extent," and that such opinion and advice might be made the foundation for determining those boundaries, with the aid, if requisite, of a declaratory Act of Parliament. It has not yet been denied on any hand that the Crown can legally and constitutionally take that course, and I continue to think this is a more safe and will be a more satisfactory mode of determination than a quasi-judicial enquiry, in which the Province of Canada is to be made to assume the position of a plaintiff in ejectment, and in that character to prove a title to turn the Hudson's Bay Company out of an imaginary possession.

The Committee held their last sitting for the examination of witnesses on the 23rd June. Their next meeting was on the 20th July, with closed doors, and so their meetings continued until their report was finally adopted. Before this I had several interviews with Mr. Labouchere, in which, among other things, the opinion of the law advisers of the Crown was spoken of. These interviews, as I was informed by a letter of Mr. Under-Secretary Merivale, rendered it unnecessary, in Mr. Labouchere's opinion, to address any reply to my letter of the 8th July. The substance of what took place at these interviews is contained in my last despatch to the Provincial Secretary. I felt it right to send a copy of this letter without delay to Mr. Labouchere in order that he might be fully aware in what light I viewed, and how I had understood, what passed between us. It will be observed that Mr. Labouchere made no direct proposition to me founded on the report of the law advisers of the Crown. On the contrary, so far as I could understand, though I may be in error, I thought him much more desirous of seeing the points in doubt or dispute settled by some compromise than of having them left for legal adjudication, while I represented that a determination of the rights conferred by the charter would tend to facilitate the settlement of the other questions which were raised. I had the opportunity of again pressing the necessity that I thought existed, that the authority of the Hudson's Bay Company should at once be put an end to, over such portions of the territory as might be ceded to Canada. And I took occasion, when the question of compensation to the Company was referred to, to state my unqualified opinion that Canada would never consent to pay any portion of it.

The report of the Committee confirms my early impression of the opinions entertained as to the future government of Vancouver's Island and the territory west of the Rocky Mountains. The importance of Vancouver's Island seems to be fully estimated, and the necessity of administering its government and providing for its settlement otherwise than by the agency of the Company. That colony is also viewed as the most convenient head-quarters for settlements on the adjacent mainland, especially about Frazer's River and Thompson's River (on or near which it is said there are indications of

gold), and generally as far as the Rocky Mountains. The distance, judging from maps, and taking a direct line without reference to the difficulties of communication and necessary divergencies, by rivers and lakes, are from Victoria, on Vancouver's Island, to the junction of the Frazer and Thompson Rivers, 180 miles; thence to Fort Thompson, 80 miles; thence to Mount Brown, 170 miles; thence to Red River, at Fort Garry, near 900 miles; and thence to Fort William, 300 miles, or 500 miles if the canoe route is followed. The Frazer River empties itself opposite the south-easterly part of Vancouver's Island, a little to the north of the 49th parallel. The parts of this country best fitted by climate and soil for agricultural settlement, as well as the points where it was asserted gold had been discovered, were, according to the evidence of Mr. Cooper, situated upon these rivers. They are also not far from the boundary line of Oregon. The greater facilities of obtaining information and of speedy communications and intervention (if intervention were necessary), from Vancouver's Island to these rivers and the country they drain, had very great influence on the minds of those who were of opinion the settlement and protection of these parts of the territory should be managed by the Government of that Colony. On the other hand, there were those (and I understand Mr. Roebuck to be strongly of that opinion) who thought that the territory lying between the Province of Canada and the Pacific far too extensive to be united to Canada and Vancouver's Island, but that it should be divided into several colonies to be settled under the authority of the British Crown, with local Governments which might in time form part of a confederacy of the British possessions on the North American continent, maintaining their connection with the British Empire.

There were not wanting some who would have been disposed to cede to this Province the territorial right of the Crown on condition that Canada should relieve Great Britain of all future charge of its government, defence and administration, and take upon its own resources the burden of any arrangement which the claims of the Hudson's Bay Company might give legitimate rise to. The express instructions I had in no way to pledge the Province to incur any expenditure until the sanction of the Provincial Parliament was obtained, was sufficient without any other reason to prevent my entering upon this topic, to which, I may be permitted to add, I saw what appeared to me to be the gravest objections. I refer to these matters in connection with the amendments which were made in the draft report first submitted to the Committee, to show that there was a wide difference of opinion in that body as to the best mode of dealing with the subject under consideration.

The recommendation of the report was in effect:—

1st. That the Province should be free to annex to her territory such portions of the land in her neighbourhood as may be available to her for the purposes of settlement—with which lands she is willing to open and maintain communication, and for which she will provide the means of local administration. The districts on the Red River and the Saskatchewan are those particularly referred to, and the recommendation, therefore, involves the giving to Canada power to assume the whole of the extensive territory bounded on the south by the United States, and on the west by the Rocky Mountains, and as far north as the soil and climate fit for agricultural settlement extends, leaving to Her Majesty's Government to effect any necessary arrangements with the Hudson's Bay Company, whose authority over the country annexed to Canada would entirely cease.

2nd. The reassuming by the Imperial Government of Vancouver's Island, and the making provision for developing the natural resources of that colony, and extending it over any portion of the continent to the west of the Rocky Mountains, on which permanent settlement may be found practicable.

3rd. Subject to these recommendations, the continuance of the privilege of exclusive trade to the Hudson's Bay Company.

On this latter recommendation I would remark, that for the reasons set forth in my despatch of the 27th March, 1857, I thought temporary renewal of the license of exclusive trade would be advisable. It also appeared to me, that to throw that trade at once and unreservedly open, would be, in effect, to give an immediate advantage to the fur traders from the United States, while its benefit to the people of Canada was remote and contingent. For the former, with establishments near the frontier (at Pembina, for instance),

already obtaining a considerable number of furs from the British territory, would be ready at once to extend their operations—to enter into active arrangements with the half-breeds and Indians, and to lay the foundation for an immediate connection with them, and so to gain a start of our own people that must be extremely disadvantageous to the latter. And there is a further danger, the apprehension of which arises from an answer given by the Right Hon. Edward Ellice, in his examination before the Committee, when he says in reference to the "servants" of the Hudson's Bay Company in the interior, "Even if it was necessary, and if the attempt were made to deprive them" (as, for instance, by taking away the exclusive right of trade) "of what are, in short, their sole means of existence, they would find means, either by communication with America or somewhere else" (possibly Russia, whose possessions join the British territories on the north), "to carry on the trade and exclude every other party." This warning or covert menace (for it is capable of that construction, though unintentionally) from a gentleman who must know the disposition of those of whom he speaks, and the influence their intercourse with the Indians has given them, is not to be overlooked, and it will not have the less point and significance when it is remembered that though settlements within the Oregon Territory had been formed under the protection of the Hudson's Bay Company's "servants;" and though that Company had no chartered rights there, but only such privileges as the exclusive right of trade gave them; yet when the Ashburton Treaty was made, and the north branch of the Columbia River yielded up to the United States, the transfer of these settlements created no difficulty, while an article was inserted into the treaty by which the possessory rights of the Company were to be respected, under which article the Company have now a great claim in discussion "before the Congress, for indemnity for the surrender of their possessory rights." These reflections are calculated to add to the importance of interposing a body of British settlers between the line of 49° north, and the most valuable fur-bearing country, before the privilege of exclusive trade is entirely abrogated, and strengthen the suggestions offered in favour of a temporary renewal of the license for exclusive trade.

The report points also to the necessity of making communications to the Government of Canada—as well, I apprehend, on the subject of boundary, as respecting such other arrangements for the settlement and administration of the territory as may be deemed expedient. Its language and expression evince a disposition to sustain and advance the welfare of the Province, and to strengthen its position as a part of the British Empire.

I cannot better conclude this report than by recapitulating the points which, appearing to me to come within the scope of my instructions, seemed to be of the greatest present importance, and were presented by me in that light in my communications with the Home authorities.

1. The determination of the proper limits between Canada and the territories (whatever they may be) belonging to the Hudson's Bay Company.

2. The marking out the boundary between the possessions of Great Britain and the United States to the Pacific.

3. The adoption of measures to protect the possessions of the Crown from intrusive settlement.

4. The granting to Canada, for a fixed period, powers to explore and survey, to open communications by land and water, and to lay out and settle townships to become, as fast as they are laid out and settled, integral portions of the Province, and, over the territory in which Canada is to possess these powers, to abrogate at once every right and privilege of the Hudson's Bay Company, excepting the right to their factories and other buildings erected within the same, with a sufficient portion of land immediately attached to such factories, etc., necessary for their convenient enjoyment and occupation.

5. The making a provisional arrangement for the government of the Red River Settlement entirely independent of the Hudson's Bay Company, until that settlement can be incorporated with the Province of Canada.

6. The reservation to the Crown of a power to lay out a line of railway, and to use all lands necessary for that purpose throughout the whole territory to the Pacific Ocean.

All which is respectfully submitted.

W. H. Draper.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
January 20, 1858.

SIR,—Her Majesty's Government have had under their consideration your letter of the 22nd December, 1856, containing an application on behalf of the Governor and Committee of the Hudson's Bay Company, for a renewal of their license for exclusive trading with the Indians in the North-Western Territories of America. They have also, since the receipt of that letter, paid full attention to the Report of the Select Committee of the House of Commons appointed during the last Session of Parliament to consider the state of the Britissh Possessions under the administration of the Hudson's Bay Company, and I have now to acquaint you, by direction of Mr. Secretary Labouchere, with the result of their deliberations on the whole subject.

2. They are disposed to advise Her Majesty to execute the powers vested in her by the Act 1 and 2 Geo. IV. c. 66, by renewing the existing license of the Hudson's Bay Company for the further term of twenty-one years from its approaching expiration on the 30th May, 1859, on the following conditions:

3. The reservation, as in the present license, of any territories which may be formed by Her Majesty's Government into colonies.

4. Vancouver's Island to be exempted from the license as already constituted into a colony. On the subject of this Island I am to refer you to another letter of even date herewith, in which the views of Her Majesty's Government in relation to it are communicated to you.

I am further to state that Her Majesty's Government consider it very desirable to ascertain, by the decision of some competent authority, the boundary between the Province of Canada and the Territories claimed by the Company under their charter.

5. It has been suggested by Her Majesty's law advisers that this might be effected through the intervention of the Judicial Committee of the Privy Council on their being moved to entertain the question. You stated in your letter, addressed to me on the 18th of July last, that the Directors of the Company were prepared to recommend to their shareholders a concurrence in this course. But I have no authority to state that the Province of Canada is also prepared to concur in it unless allowed at the same time to discuss the farther validity of the charter itself, a question which, on public grounds, Her Majesty's Government do not consider themselves authorized to raise. If, therefore, any parties in Canada propose to take measures towards contesting the Company's rights to the full extent before a legal tribunal, Her Majesty's Government must leave them to take that course on their own responsibility. If, on the other hand, Canada thinks it expedient to agree to the course now proposed, namely, that of trying the question of boundary alone with the consent of the Hudson's Bay Company, Her Majesty's Government will afford every facility in their power for its determination. It is, therefore, Mr. Labouchere's intention, in the first place, to submit this proposal to the option of the colony.

6. But supposing that no such proceedings were taken, and that the colony declines to contest the naked question of boundary in the manner suggested, Mr. Labouchere is of opinion that the objects recommended by the Committee may be attained by another course. He will then be prepared to propose to Canada, and to the Company, on the part of Her Majesty's Government, as a further condition for the renewal of the license, that the Company should surrender to the Crown such portions of the Territory now claimed by it under the Charter as may be available to and required by Canada for purposes of settlement.

7. It is stated in the report that the districts likely to be required for early occupation are those on the Red River and Saskatchewan. If that should be the case, the portion of territory thus generally indicated should be rendered free for annexation to

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

Canada; such annexation to take place, whether in this or any other direction, when Canada has made a road or any other line of communication connecting the territory she requires, and when Canada has given satisfactory evidence of her intention to take steps for laying out townships, and settling and administering the affairs of these districts. Thus the annexation might be gradual in case it should be found to suit the convenience of the several parties interested.

8. For the purpose of ascertaining the satisfactory performance by Canada of the terms thus required, the period when such annexation should consequently commence, and the manner in which it should be carried into execution, Mr. Labouchere would propose the appointment of a Board of three Commissioners, one to be nominated by the Province of Canada, one by the Company, and one by Her Majesty's Government.

9. The same Board should be authorized to consider and report on the following question, namely,—the amount of pecuniary compensation which, under all the circumstances of the case, may become justly payable to the Company in consequence of such contemplated annexation, and in respect of property which they may be required to surrender.

10. The Commissioners should be instructed to dispose of further questions connected with the transfer which, in the course of these proceedings, it may appear desirable to refer to them.

11. Her Majesty's Government have further to propose that, if it should at any time be made known to them that there is a good reason to believe that mining operations or fisheries may be advantageously conducted in any portion of the territory held by the Hudson's Bay Company under their charter, facilities should be afforded to Her Majesty's subjects for engaging in these pursuits within limited districts. For this purpose it would be necessary that Her Majesty's Government should be authorized to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place the parties engaged to prosecute such undertakings in possession of the land required for the purpose, any territorial rights of the Company notwithstanding. On the other hand, it should be fully understood that Her Majesty's Government will not grant any such facilities unless the parties applying for them give to Her Majesty's Government and the Company substantial proof of their competency, and of the *bona fide* nature of their intentions; nor unless proper security be taken against the interference of such parties with the fur trade of the Company with the Indians. The mode of carrying into execution these arrangements would be matter for subsequent consideration if the Company should agree to the principles now suggested.

12. If the Company should signify through yourself their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the Local Government of Canada for their consideration, and in the event of their concurrence, they will be prepared to take the necessary means for carrying them into effect.

I have, etc.,

H. Merivale.

John Shepherd, Esq.

The Governor of the Hudson's Bay Company to the Colonial Secretary.*

Hudson's Bay House,

21st January, 1858.

Sir,—I have the honour to acknowledge the receipt of Mr. Merivale's letter of the 20th instant, communicating the result of the consideration which Her Majesty's Government had given to my letter of the 22nd December, 1856, and adverting to the full attention paid to the report of the Select Committee of the House of Commons, which

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

inquired last session into the state of the British possessions under the administration of the Hudson's Bay Company, detailing the conditions on which Her Majesty's Government are prepared to advise Her Majesty to renew the existing license for a further term of twenty-one years, and informing me that if the Company should signify their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the local Government of Canada for their consideration, and in the event of their concurrence, will be prepared to take the necessary measures for carrying them into effect.

In reply, I beg leave to state, that after full consideration with my colleagues in the direction, we shall be prepared to recommend to our proprietary body:

1st. To agree to the reservation, as in the present license, of any territories which may be formed by Her Majesty's Government into colonies.

2nd. To agree to the proposed exception of Vancouver's Island from the license; and upon this subject we beg to refer you to the answer to the communication which you have forwarded to us, conveying the views of Her Majesty's Government in relation thereto.

3rd. We concur in your suggestion that in the event of the Government of Canada declining to be a party to the proposed reference of the Boundary question to the Judicial Committee of the Privy Council upon the footing which Her Majesty's Government are prepared to recommend, and which this Company has already expressed their willingness to adopt, the objects recommended by the Committee of the House of Commons may be attained by another course, the detailed arrangements of which should be carried out under the supervision of three Commissioners, one to be appointed by the Crown, one by the Canadian Government, and one by the Hudson's Bay Company.

I trust that the ready acquiescence of the Hudson's Bay Company in the plan proposed for meeting the requirements of the Canadian Government, will be accepted as an earnest of their desire to be on terms of harmony and friendship with their countrymen in Canada.

4th. In communicating this assent on the part of the Hudson's Bay Company, it is, however, right to notice that the territories mentioned as those that may probably be first desired by the Government of Canada, namely, the Red River and Saskatchewan districts, are not only valuable to the Hudson's Bay Company as stations for carrying on the fur trade, but that they are also of peculiar value to the Company, as being the only source from which the Company's annual stock of provisions is drawn, particularly the staple article of *Pemican*, a regular supply of which is absolutely necessary to enable the officers of the Company to transport their goods to the numerous inland and distant stations, and to feed and maintain the people, both European and Indians, stationed thereat. It is proper, therefore, that I should draw your attention to the fact that the ultimate loss of those districts will most probably involve the Hudson's Bay Company in very serious difficulties, and cause a great increase of expense in conducting their trade. The Company assume that the Canadian Government will be responsible for the preservation of peace, and the maintenance of law and order in all the territories ceded to them, and that they will prevent lawless and dishonest adventurers from infringing from thence the rights of the Company over the remaining portions of their territories.

5th. With respect to the eleventh paragraph of your letter, in which it is proposed that "Her Majesty's Government should be authorized at any time to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place parties engaging to prosecute mining operations or fisheries in possession of the land required in any portion of our territory for the purpose, any territorial rights of the Company notwithstanding,"—assuming that the principles stated in the 9th paragraph, as applicable to cessions to Canada, apply equally to any cessions which may take place in virtue of the 11th clause, I beg to state that we shall be prepared to recommend our shareholders to concur in this proposal.

6th. In conclusion, allow me to refer to the sentiments expressed in the fifth and last paragraph of my letter of the 18th of July last, as explanatory of the continued views of myself and colleagues. We are willing to enter upon a new tenure of our engagements under the renewed license, upon being assured of the support of Her

Majesty's Government, and of the cordial co-operation of the neighbouring Government of Canada, in maintaining tranquillity and order among the Indian tribes, and protecting the frontiers of the whole adjacent British territories from foreign encroachment.

The interests of the Hudson's Bay Company, we are convinced, are closely united with the real prosperity of Canada, and we trust that the humane and beneficent objects of Her Majesty's Government will prosper under our united exertions.

I have, etc.,

JOHN SHEPHERD,
Governor.

Right Hon. H. Labouchere.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
22nd January, 1858.

SIR,—In sending for your consideration and that of your Council, a correspondence which has recently passed between the Directors of the Hudson's Bay Company and this Department (Colonial Office to Hudson's Bay Company, 20th January, 1858; do. do. Hudson's Bay Company, 21st January, 1858; do. do.) on the subjects embraced by the investigation of a Committee of the House of Commons in the last year's session of Parliament, it is not necessary that I should add much to the information which that correspondence conveys.

The relations in which the Company is placed, both towards Canada and towards Her Majesty's Government in this country, have naturally attracted in no common degree the attention of the Canadian community, and they were also carefully investigated by the Committee to which I have referred.

It is the anxious desire of Her Majesty's Government to take the opportunity afforded by the approaching termination of the Company's license of exclusive trade over what is termed the Indian Territory, for placing these relations upon such a footing as shall be consonant with justice, and at the same time conducive to the satisfaction and to the interests of the great Province under your government.

It is for the purpose of promoting these objects that I have carried on the correspondence which I now transmit to you, and I make no question but that it will be considered in a similar spirit by the Legislature and people of Canada.

I do not propose to discuss the question of the validity of the claims of the Company, in virtue of their charter, over the whole territory known as Rupert's Land. Her Majesty's Government have come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from those principles of equity by which their conduct ought to be guided. If, therefore, it is to be raised at all, it must be by other parties on their own responsibility.

With regard to the question of boundary, as distinguished from that of the validity of the charter, Her Majesty's Government are anxious to afford every facility towards its solution, a mode of accomplishing which is indicated in the correspondence, if such should be the desire of Canada.

But I trust that in any case a machinery may be provided through the course now proposed which will afford to Canada the means of obtaining any districts which she may require for the purpose of settlement, and to which she may be able to afford the benefits of administration and protection. The tracts claimed by the Company under its charter are conterminous on the north and west with the whole of that great Province which is now united under your government. I therefore look to the gradual aggregation of such portions of these tracts as may be found available to that Province which contains within

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

its limits the noble water communication afforded by the Lakes and the St. Lawrence to the Atlantic.

I recommend this important subject to the early consideration of yourself and your advisers. Her Majesty's Government can have no other wish regarding it than, consistently with the principles of good faith, to promote the prosperity and consult the feelings of the people of Canada in this matter, as well as to provide for the security of law and order in these vast regions, in the maintenance of which Canada has herself so deep an interest.

I have, etc.,

H. Labouchere.

Governor the Right Honourable Sir E. W. Head, Bart.,
etc., etc., etc.

Mr. Gladman* to the President of the Council (Canada).†

Toronto, 26th March, 1858.

Sir,—Permit me again to offer a few remarks relative to the correspondence between the British Colonial Office and Mr. Shepherd, on the affairs of the Hudson's Bay Company.

In Mr. Shepherd's letter to Mr. Labouchere, of 21st January, 1858, he observes, "It is, however, right to notice, that the territories mentioned as those that may probably be first desired by the Government of Canada, namely, the Saskatchewan and Red River districts, are not only valuable to the Hudson's Bay Company as stations for carrying on the fur trade, but that they are also of peculiar value to the Company, as being the only source from which the Company's annual stock of provisions is drawn, particularly the staple article of pemican, a regular supply of which is absolutely necessary to enable the officers of the Company to transport their goods to the numerous inland and distant stations, and to feed and maintain the people, both Europeans and Indians, stationed thereat. It is proper, therefore, that I should draw your attention to the fact, that the ultimate loss of those districts would most probably involve the Hudson's Bay Company in very serious difficulties, and cause a great increase of expense in conducting the trade."

The object of Mr. Shepherd, in the foregoing statement, appears to be to induce a belief that the Company would sustain an immediate pecuniary loss by the occupation of the Red River and the Saskatchewan districts as a portion of Canada, and under its jurisdiction, and that by reason of the Company being deprived of the power to trade or buy pemican from the hunters, they would be placed in circumstances of difficulty and expense.

It need scarcely be observed that the object of immigrants into that country, from Europe, Canada, or other places, being settlement and the cultivation of the soil, their farming operations could not materially interfere for some years to come with the providing of the staple article of "pemican" by the Hudson's Bay Company, upon which so much stress is laid by Mr. Shepherd. If my understanding of the question is correct, the desire of Canada is the extinction of the monopoly or exclusive rights of the Company in every portion of territory under Canadian rule, and the admission of the people of Canada to carry on business operations at Red River, the Saskatchewan, or any other portion of British North America, as freely and as unrestrainedly as they may do in Toronto or Montreal. It is not, I presume, the desire of Canada to exclude or prevent

* [Mr. George Gladman was the gentleman selected as Chief Director of the Canadian Government exploring expedition to the Red River country in 1857. See what is stated of him in the first paragraph of his instructions, p. 49, *ante*.—G. E. L.]

† Sess. Papers, Can., 1858, Vol. 16, No. 3.

the Hudson's Bay Company from carrying on their commercial transactions at the Red River or the Saskatchewan, as freely as they now do at Lachine. Equal rights as British subjects and merchants is all that is contended for by Canada, and as Canada does not seek to deprive the Company of any of their establishments or possessions in the Saskatchewan or Red River districts, there is no good reason for supposing that the Company will in any way be debarred from providing as much pemican as they may think necessary for carrying on their trade as heretofore. It is evident many years must elapse before the cultivable prairie lands will become so occupied by settlers as to interfere materially with the trading of provisions from the hunters at Saskatchewan, and when that time arrives, domesticated animals will take the place of the buffalo.

The question of pecuniary compensation can, as I conceive, have reference only to the right of soil which the Company claim to possess under their Charter, or by purchase from the Earl of Selkirk.

The license of exclusive trade with the Indians by the Company being limited to a certain time only, and those territories being reserved to be formed into colonies by Her Majesty's Government whenever it may be considered proper to do so, I apprehend the rights of the Company will cease as soon as the present lease expires, and other government than that of the Company is established.

Another remark made by Mr. Shepherd is this: "The Company assume that the Government (Canadian) will be responsible for the preservation of peace, and the maintenance of law and order in all the territory ceded to them, and that they will prevent lawless and dishonest adventurers from infringing, from thence, the rights of the Company over the remaining portions of their territory."

In these observations, the Hudson's Bay Company assume to treat for the cession of certain territories. As a trading company of British merchants, they assume that the Canadian Government will maintain law and order in the territories ceded to them by the Company, which territories yet, in point of fact, belong to the natives. It may be well here to consider what the present government of the Red River and the Saskatchewan districts really is. So far as the uninitiated know of the matter, it is generally understood to be this: A Governor and a Council appointed by the Hudson's Bay Company, and holding their meetings at the Company's forts in the Red River Settlement, form the entire executive administration. The Governor being also the only legal functionary in the settlement, the Company's legal adviser, the judge, the directors of the Company (in London) and their representative, the Governor of Rupert's Land (residing for the most part at Lachine) make all the appointments. Hence it devolves chiefly on "the Governor and Council of Assiniboia," as it is in Hudson's Bay form expressed, to preserve the peace, and to maintain law and order in those districts. Can that government, appointed although they be by the Company, and with all the influence of the Company to support them—can they prevent adventurers (I will not call them "lawless and dishonest," for they are chiefly natives seeking to earn an honest livelihood in their own land) from infringing upon the assumed rights of the Company over the other portions of what they are pleased to call Rupert's Land? They cannot, and it would be clearly an impossibility for any government established by Canada to prevent natives of that country, or in fact any others who might choose to do so, from trading in that extensive territory, wherever they might find it most advantageous to do so. Nor can I suppose that a Canadian Government would for one moment under any circumstances entertain such an idea.

As is well known, the Hudson's Bay Company have for years past held leases from Government of the King's Posts and Seigniories in Lower Canada. Have they been able to prevent intrusion on the Queen's domain and infringements of the rights given by these leases? No, certainly not; and what has been their remedy? Recourse by civil action to the courts of Canada whenever they were disposed to try the question. And so it will and must be in the districts of Red River, when other laws than those of the Hudson's Bay Company shall have been there established.

Whatever the form of government that may be decided upon, the preservation of peace and the maintenance of law and order will, of course, be its legitimate objects. There need, however, be no apprehension of any disturbance of the peace, except from the officers or servants of the Company, who may take upon themselves to determine (as

in the case of Mr. Bannatyne) what is an infringement of the Company's rights, or an intrusion on the Company's undefined boundary line, according to their own ideas. It is, therefore, in my humble opinion, much to be desired, even for the sake of peace and good order, that the whole trade should be free and open to all British subjects.

That it would be requisite, in such case, to place the trade under certain restrictions and enactments (as to the introduction of ardent spirits, for instance) is clear, but that all in the territory, from the Rocky Mountains to the Hudson's Bay, whether servants of the Hudson's Bay Company or not, whether at Red River or on the shores of Hudson's Bay, should be amenable to the jurisdiction of the Red River Government, is equally clear, and a measure of necessity and good policy.

As regards the governing of these territories from or by Canada, the difficulties do not appear greater than they are at the present moment, under the rule of the Company. The gentleman who fills the office of Governor of Assinniboia is a lawyer from Montreal, and it will have been observed by my previous remarks, that the whole machinery of his government consists of a Council, acting under instructions from Lachine or from London. If the Company can govern these districts in a mode so simple, there is no question but that the Canadian Government can devise one equally as simple, or one more efficacious and more satisfactory to the mass of the people, especially when the line of intercommunication between Lake Superior and the Red River will be less difficult than it now is. If the lands on the borders of Lake Superior, on the Rainy River, and on Red River, were surveyed and laid out in townships for settlement, under the authority of the Government, and gradual occupation promoted by the opening out of a practicable road, the appointment of magistrates, and the establishing of a municipal code similar to that of Canada, conferring on the inhabitants the rights of election in their several municipalities would be all that the state of the country would require for several years to come.

I am confident I speak the sentiments of the Red River people when I say their chief desires are, a voice in their own government, and freedom to trade in the best markets within their reach.

I venture to offer these few remarks, suggested by the local knowledge and experience acquired in the several positions in which I have been placed, and submitting them to your favourable construction as to the motives by which I am actuated.

I have the honour, etc.,

GEORGE GLADMAN.

To the Honourable
The President of the Council.

THE PROVINCIAL SECRETARY TO SIR GEORGE SIMPSON, THE HUDSON'S BAY COMPANY'S GOVERNOR OF RUPERT'S LAND.*

SECRETARY'S OFFICE,

TORONTO, 14th April, 1858.

SIR,—I am commanded by his Excellency the Governor-General to state to you, for the information of the Honourable Hudson's Bay Company, that it is the intention of the Canadian Government to send another expedition this year into the country in the neighbourhood of the Red River Settlement, for the purposes of exploration.

2. The expedition will be divided into two parties, of which one will be under the direction of Professor Hind, and the other under that of Mr. Dawson. Both of these gentlemen served with the expedition last year, and the latter is still at Red River.

3. The operations of Mr. Dawson and his party, probably about twenty men, will be confined pretty much to the same ground as last year, namely, the route from Fort

* Sess. Papers, Can., 1858, Vol. 16, No. 3.

William to Fort Garry ; while the operations of Professor Hind and his staff will extend to the country west of Red River and Lake Winnipeg, and below the Rivers Assiniboine and Saskatchewan, as far west as "South Branch House."

4. His Excellency desires to bespeak through you for the expedition this year the same courteous assistance from the officers and servants of the Company on the line of the proposed expedition, which was so readily proffered last year, and which was (his Excellency is informed) so freely extended to all the members of the expedition.

5. This letter will be delivered to you by Professor Hind, who is about to repair to Montreal on business connected with the expedition.

6. Professor Hind would be glad to be favoured by you with a general letter, addressed to the officers in charge of the Company's posts on the route about to be visited by him, requesting them to promote, as far as in their power, the general objects of the expedition under his charge. His Excellency desires me to state that he trusts it will be in your power to gratify Mr. Hind's wishes in this matter, as he doubts not it would very materially advance the object of the expedition.

I have the honour, etc.,

T. J. J. Loranger,
Secretary.

Sir George Simpson,
Governor Hudson's Bay Company,
Hudson's Bay House,
Lachine, Montreal.

Sir George Simpson to the Provincial Secretary.*

Hudson's Bay House,

Lachine, 23rd April, 1858.

Sir,—I have the honour to acknowledge your communication, dated 14th instant, informing me, by command of his Excellency the Governor-General, of the intention of the Canadian Government to send another expedition this year to the neighbourhood of the Red River Settlement, for the purposes of exploration, and requesting for the expedition the same assistance from the Hudson's Bay Company as was rendered to its members last season.

In reply, I beg to state that your letter was delivered to me in person by Professor Hind, to whom I intimated verbally, that it afforded the Hudson's Bay Company at all times great pleasure to render good offices to the Government of Canada, and that such assistance as could be given at the Company's posts to the expedition under his command would be freely rendered.

I have already furnished Professor Hind with the letters of introduction to the Hudson's Bay Company's officers, which you apply for, and given him the necessary authority to obtain canoes and other supplies at Sault Ste. Marie and Fort William. The usual equipment of tent and other camp appointments for his use, while travelling in the interior, has been provided from the Company's store.

Begging you will assure his Excellency the Governor-General that the Hudson's Bay Company will forward the objects of the exploring expedition with the same cordiality with which they are ever anxious to co-operate with the Government of this Province,

I have the honour, etc.,

G. Simpson.

The Honourable T. J. J. Loranger,
etc., etc.

---

*Sess. Papers, Can., 1858, Vol. 16, No. 3.

ADDRESS OF THE CANADIAN PARLIAMENT TO HER MAJESTY, 13TH AUGUST, 1858.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and Assembly of Canada, in Provincial Parliament assembled, humbly approach Your Majesty, for the purpose of representing—

That the approaching termination of the License of Trade granted by Your Majesty's Imperial Government to the Hudson's Bay Company over the Indian Territories, a portion of which, in our humble opinion, Canada has a right to claim as forming part of her territory, renders imperative the adoption of such measures as may be necessary to give effect to the rights of the Province, and presents a favourable opportunity for obtaining a final decision on the validity of the Charter of the Company, and the boundary of Canada on the north and west.

That Canada, whose rights stand affected by that Charter, to which she was not a party, and the validity of which has been questioned for more than a century and a half, has, in our humble opinion, a right to request from Your Majesty's Imperial Government a decision of this question, with a view of putting an end to discussions and questions of conflicting rights, prejudicial as well to Your Majesty's Imperial Government as to Canada, and which, while unsettled, must prevent the colonization of the country.

That the settlement of the boundary line is immediately required, and that therefore we humbly pray Your Majesty that the subject thereof may be forthwith submitted for the opinion of the Judicial Committee of Your Majesty's Privy Council, but without restriction as to any question Canada may deem it proper to present on the validity of the said Charter, or for the maintenance of her rights.

That any renewal of the license to trade over the Indian Territories should, in our humble opinion, be granted only upon the conditions that such portions thereof, or of the other territories claimed by the Company (even if their Charter be held valid), as may be required from time to time to be set apart by Canada, or by Your Majesty's Government, into settlements for colonization, should, as so required, be withdrawn from under any such license and the jurisdiction and control of the said Company; and that Your Majesty's Government, or the Governor-General in Council, should be permitted to grant licenses to trade in any portions of the said territories while held by or in occupation of the said Company, upon such conditions for the observance of law and the preservation of the peace, for the prohibition or restriction of the sale of ardent spirits, for the protection of Indian tribes from injury or imposition, and with such other provisions as to Your Majesty's Government, or to his Excellency in Council, may seem advisable.

That in our humble opinion Canada should not be called upon to compensate the said Company for any portion of such territory from which they may withdraw, or be compelled to withdraw, but that the said Company should be allowed to retain and dispose of any portion of the lands thereof on which they have built or improved.

All which we humbly pray Your Majesty to take into Your Majesty's gracious and favourable consideration.

* Journals, Legislative Assembly, Canada, 1858, p. 1028.

RESOLUTIONS, MOVED BY MR. W. McD. DAWSON, IN THE LEGISLATIVE ASSEMBLY, CANADA, 13TH AUGUST, 1858, IN AMENDMENT TO THE RESOLUTIONS FOR THE FOREGOING ADDRESS. NEGATIVED ON A VOTE OF 42 TO 23.*

1. *Resolved*, That Canada, or New France, as originally known and recognized by European nations, had no limit towards the north except the Frozen Sea, and no limit towards the west except the Pacific Ocean.

2. *Resolved*, That a Charter was granted by King Charles the Second of England, in 1670, to certain parties as "The Merchants Adventurers of England, trading to Hudson's Bay," which, although neither the grantor nor the British people knew anything, at that time, of the interior of the country about Hudson's Bay, nevertheless precluded the Company from entering upon the possessions of France; the Charter thus bearing upon its face a doubt of the extent, or indeed the existence, of the title it professed to convey, and a knowledge of the fact that the right to the country, even on the shores of Hudson's Bay (which only was then known to England), was, in whole or in part, vested in France.

3. *Resolved*, That from the first moment the intrusion of the Hudson's Bay Company became known to France, or to the Canadian authorities of that day, it was forcibly and for the most part successfully resisted, though in a time of peace between Great Britain and France.

4. *Resolved*, That by the Treaty of Peace concluded at Ryswick, in 1697, between Great Britain and France, most of the places situate on Hudson's Bay were recognized as belonging to France, while the claims of the two nations to the remaining places were to be determined by commissioners respectively appointed for that purpose, who, however, never met for the object contemplated.

5. *Resolved*, That by the Treaty of Peace concluded at Utrecht, in 1713, the whole of Hudson's Bay (saving the rights of the French occupants down to that period) was ceded by France to Great Britain, but without defined limits, which were also to be determined by commissioners, who, however, in like manner, never met for the purpose.

6. *Resolved*, That the extent of the actual possession, by each of the two nations, affords, therefore, for the next fifty years, the true basis of their respective rights, unaffected by the various propositions, not based upon the treaty, but conventionally made or rejected by the one or the other.

7. *Resolved*, That during the said period the possession of Great Britain, through the medium of the Hudson's Bay Company, was confined to the shores of Hudson's Bay, or extended a very short distance inland, while France was in possession of the interior countries to the south and west, including the Red River, Lake Winnipeg, the Saskatchewan, etc.

8. *Resolved*, That by the Treaty of Paris, in 1763, Canada was ceded by France, as then possessed by her, to Great Britain, reserving to the French inhabitants all the rights and privileges of British subjects—a provision made specially applicable to the Western Territories (then the great seat of the fur trade) by the capitulation of Montreal.

9. *Resolved*, That Canadians, alike of British and French origin, continued the fur trade on a large and increasing scale, from 1763 to 1821, by the Ottawa, Lake Superior, the Saskatchewan, etc., west to the Pacific Ocean, and by the McKenzie River north to the North Sea.

10. *Resolved*, That in 1774, the Hudson's Bay Company, exercising the undoubted right of British subjects, also entered upon the Saskatchewan and other parts of the

* Journals, Legislative Assembly, Canada, 1858, p. 1026. The yeas and nays, appearing at p. 1028 of the same Journals, were as follows:

YEAS—Messieurs Aikins, Bell, Biggar, Cauchon, Christie, Clark, Dawson, Dorland, Dufresne, Gould, Hébert, Howland, Jobin, Mattice, McDougall, McKellar, Munro, Notman, Papineau, Powell (Walker), Rymal, Short, Wright.—23.

NAYS—Messieurs Archambeault, Baby, Beaubien, Bellingham, Benjamin, Burton, Cameron (John), Carling, Cayley, Cartier (Atty.-Gen.), Coutlée, Daoust, Dionne, Dunkin, Ferres, Fournier, Gaudet, Harwood, Holmes, Labelle, Lacoste, Laporte, LeBoutillier, Loranger, Macbeth, McCann, McDonald (A. P.), McMicken, Morrison, Panet, Playfair, Robinson, Roblin, Rose (Sol.-Gen.), Scott (William), Sicotte, Simard, Simpson, Smith (Sidney), Talbot, Turcotte, Wright.—42.

Canadian Territory ceded by the Treaty of Paris, and carried on the fur trade there, though on a lesser scale than the North-West Company of Canada.

11. *Resolved*, That, about the year 1812, the Hudson's Bay Company, under the auspices of the Earl of Selkirk, set up the pretence that the countries on the Red River, the Saskatchewan, etc., and the jurisdiction thereof, belonged to them in virtue of their Charter of 1670, and attempted practically to enforce this view by the expulsion of the North-West Company, which, however, they failed to effect, and in the attempt to do which the decisions of the Imperial and Canadian authorities were uniformly adverse to their pretensions.

12. *Resolved*, That after a protracted struggle between the two Companies, they united in 1821, and obtained a joint lease from the Imperial Government of the "Indian Territories."

13. *Resolved*, That under this lease the two Companies—uniting upon the policy of the Hudson's Bay Company—have since carried their trade through Hudson's Bay, allowing the cheaper and more advantageous route by the St. Lawrence to fall into disuse, to the serious detriment of the resources of Canada, to which the fur trade had always been a source of great wealth.

14. *Resolved*, That the said "Indian Territories" being without any specific territorial designation, the Company have taken advantage of this circumstance to disseminate such views as were most suitable to their own objects; publishing maps and creating territorial divisions, upon paper, alike inconsistent with all authority, contrary to historical facts, adverse to geographical association, and even in direct contradiction to the terms of the Statute under which their lease is held; and by these means they have succeeded in imposing upon the people of Canada so as to exclude them from a lucrative trade which, in fact, there is no lease, charter, or law to prevent them from prosecuting.

15. *Resolved*, That, therefore, the Hudson's Bay Company under their Charter (in itself held by eminent jurists to be invalid and unconstitutional, void, also, as this House believes it to be, on the ground that the countries it professes to grant belonged at that period to France) cannot, by virtue thereof, in any event, claim the interior countries on Lake Winnipeg and the Saskatchewan; and under their lease of the Indian Territories can claim the exclusive trade of such countries only as they may prove to be no part of Canada.

16. *Resolved*, That this House maintains the right of the people of this Province to enter upon and freely to trade in that part of Canada, or Nouvelle France, as originally known, on Hudson's Bay, ceded by France to Great Britain in 1713; and, independently of the ownership thereof having been in France previous to 1670, denies the existence of any constitutional restriction to preclude them from enjoying the rights of British subjects in that or any other British territory.

17. *Resolved*, That, by the Treaty of Paris, the Mississippi necessarily became the westerly boundary of the then southerly part of Canada (now part of the United States), because France retained the west bank of that river from its source downwards; but the territory lying north of the source of the Mississippi, thence west, forming the northerly boundary of Louisiana, previously possessed by France, and so ceded by the said treaty, this House claims (save in so far as it has since been relinquished to the United States) as an integral part of Canada, without any westerly limit except the Pacific Ocean.

18. *Resolved*, That a joint address of the two Houses of Parliament be presented to Her Majesty, founded upon the above resolutions, and praying that, in consideration of the injurious consequences to the trade and general interests of this Province resulting from the indefinable nature of the "Indian Territories," under cover of which the lessees have been enabled to create a monopoly in localities not legally affected by their lease of the said territories, Her Majesty may be graciously pleased to refuse any renewal of such lease to the Hudson's Bay Company; and further, that Her Majesty may be pleased to sanction no Act by which the existing territorial rights of jurisdiction of this Province would be affected.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

TORONTO, August 16, 1858.

SIR,—I have the honour to enclose a Joint Address from the Legislative Council and Assembly of Canada, to Her Majesty the Queen, on the subject of the Territory of the Hudson's Bay Company, which I request may be laid at the foot of the Throne.

I have, etc.,

EDMUND HEAD.

The Right Honourable
Sir E. B. Lytton, Baronet,
etc., etc., etc.

REPORT OF A COMMITTEE OF COUNCIL, CANADA, DATED 4TH SEPTEMBER, 1858, APPROVED BY THE GOVERNOR-GENERAL ON THE 9TH SEPTEMBER, 1858.*

The Committee of Council respectfully recommend that the Resolutions passed by the Legislative Council and the Legislative Assembly, and the Joint Address thereon of both Houses, on the subject of the Hudson's Bay Territory, be urged upon the attention of the Imperial Government, by such members of the Executive Council as may be in London during this present autumn; and that, at the same time, the importance of opening a direct line of communication, by railway or otherwise, from Canada through the Red River and Saskatchewan Territories, to Fraser's River and Vancouver's Island, be brought by them under the notice of the Imperial authorities.

Certified.

WM. H. LEE,
Clerk C. E. C.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, September 9, 1858.

SIR,—I have the honour to enclose a Copy of a Minute of the Executive Council of Canada, approved by myself this day, respecting the Joint Address of both Houses of the Provincial Legislature, on the subject of the Hudson's Bay Territory, and the questions connected therewith.

I fully concur with my Council in the importance of this matter, and would press its consideration on Her Majesty's Government.

I have, etc.,

EDMUND HEAD.

The Right Honourable
Sir E. B. Lytton, Baronet,
etc., etc., etc.

---

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 26th October, 1858.

SIR,—I have to acknowledge the receipt of your despatch, No. 117, of the 9th September, enclosing a Copy of a Minute of the Executive Council of Canada, respecting the Joint Address of the Provincial Legislature, relative to the Hudson's Bay Territory, and the questions connected therewith.

This important subject will not fail to receive the careful consideration of Her Majesty's Government.

I have, etc.,

E. B. LYTTON.

Governor Sir Edmund Head,
etc., etc., etc.

THE DEPUTY GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

12th October, 1858.

SIR,—With reference to a communication addressed to me, under date of the 3rd ultimo, the receipt of which I had the honour to acknowledge on the 7th of that month, I beg now to state that this Company can only re-assert their right to the privileges granted to them by their Charter of Incorporation, the extent and nature of which they have already fully explained in the papers which will be found amongst those printed by order of Parliament. I refer particularly to a letter addressed by Sir J. Henry Pelly to Earl Grey, dated 13th September, 1849, enclosing a paper entitled "Statement of the Rights as to Territory, Trade, Taxation, and Government, claimed and exercised by the Hudson's Bay Company, on the Continent of North America," and marked No. 2, among the papers on the affairs of the Hudson's Bay Company, printed by order of the House of Commons, on the 12th of July, 1850.

This Company cannot, therefore, be a consenting party to any proceeding which is to call in question rights so long established and recognized, but they will, of course, be prepared to protect themselves against any attempt that may be made on the part of the Canadian authorities to deprive them, without compensation, of any portion of the territory they have so long been in possession of.

I have, etc.,

H. H. BERENS,
Deputy-Governor.

The Right Honourable
Sir E. Bulwer Lytton, Baronet,
etc., etc., etc.

THE UNDER-SECRETARY TO THE DEPUTY GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET, 3rd November, 1858.

SIR,—I am directed, by Secretary Sir E. B. Lytton, to acknowledge the receipt of your letter of the 12th October.

Sir E. Lytton will not conceal the disappointment and regret with which he has

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

received that communication, containing, if he understands its tenor correctly, a distinct refusal on the part of the Hudson's Bay Company, to entertain any proposal with a view to adjusting the conflicting claims of Great Britain, of Canada, and of the Company, or to join with Her Majesty's Government in affording reasonable facilities for the settlement of the questions in which Imperial, no less than Colonial, interests are involved.

It is Sir E. Lytton's anxious desire to come to some equitable and conciliatory arrangement by which all legitimate claims of the Hudson's Bay Company should be fairly considered with reference to the Territories or the privileges they may be required to surrender; but if the decision as conveyed in your letter, be regarded as final, all power to facilitate such an arrangement is withdrawn from his hands.

By that decision, Sir E. Lytton sees with regret, that a process of temperate and amicable enquiry and adjudication must be exchanged for a legal conflict, where all parties concerned will be brought into antagonistic and even hostile relations, and where it is manifest that the terms of compensation, compromise, and mutual convenience, which Her Majesty's Government would, under other circumstances, have been able to negotiate, must become far more difficult of attainment, if not actually unattainable.

Unsatisfactory as this result would be, Sir E. Lytton will not feel at liberty to decline it. He desires that the Hudson's Bay Company should distinctly understand, that, in his opinion, the time for arriving at some authoritative definition of conflicting claims can no longer be postponed with safety, or in justice to public interests; and both Canada and the British Parliament might justly complain of further and unnecessary delay. But before deciding finally upon the course to be pursued, he desires to place once more the question before the Hudson's Bay Company, with a sincere hope that on a further consideration they may see the expediency of modifying the determination which your letter announced.

Where on all sides interests so great and various are concerned, the wisest and most dignified course will be found, as Sir E. Lytton has on previous occasions pointed out, in an appeal to, and a decision by, a Judicial Committee of the Privy Council, with the concurrence alike of Canada and of the Hudson's Bay Company.

If the adoption of such a procedure be advantageous to the interests of all parties concerned, Sir Edward cannot but think it would be particularly for the interest of the Hudson's Bay Company.

It would afford a tribunal pre-eminently fitted for the dispassionate consideration of the questions at issue; it would secure a decision which would probably be rather of the nature of an arbitration than of a judgment; and it would furnish a basis of negotiation on which reciprocal concession and the claims for compensation could be most successfully discussed.

In such an event, Sir E. Lytton would be prepared to agree that the Company, if they succeed in maintaining the full rights which they claim, should be indemnified against the costs, and that in any other result it should be understood that each party should bear its own expenses incident to the proceeding.

It is not for Sir E. Lytton to dictate to the Company the course which they should pursue, but I am to place distinctly before them his own intentions, and to leave them to decide.

If, on the one hand, the Company will meet Sir E. Lytton in finding the solution for a recognized difficulty, and will undertake to give all reasonable facilities for trying the validity of their disputed Charter, they may be sure that they will meet with fair and liberal treatment, so far as Her Majesty's Government are concerned; but if, on the other hand, the Hudson's Bay Company persist in declining these terms, and can suggest no other practicable mode of agreement, Sir E. Lytton must hold himself acquitted of further responsibility to the interests of the Hudson's Bay Company, and will take the necessary steps for closing a controversy too long open, and for securing a definite decision which is due to the material development of British North America, and the requirements of an advancing civilization.

It is only fair to add, that in such case the renewal of the exclusive license to trade in any part of the Indian Territory, a renewal which could only be justified to Parliament as part of a general arrangement, adjusted on the principles of mutual concession, must become impossible.

I have, etc.,

Captain Berens. CARNARVON.

THE DEPUTY-GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

10th November, 1858.

SIR,—I have the honour to acknowledge the receipt of Lord Carnarvon's letter of the 3rd instant, to which I now beg to reply, as I am anxious that the views and intentions of this Company should not be misunderstood.

In the year 1850 a correspondence passed between the Colonial Office and this Company in reference to the objections raised by certain parties in regard to the validity of the rights claimed by this Company under their Charter, and, under date of the 24th January, 1850, Mr. B. Howes, by desire of Lord Grey, transmitted to Sir H. Pelly, the then Governor of this Company, a copy of a letter proposed to be addressed by his Lordship to Mr. Isbister, the person bringing forward the complaints referred to. In answer to that communication, the Secretary of this Company, under date the 29th January, 1850, stated that there was nothing in the letter so proposed to be addressed to Mr. Isbister, to which the Directors of the Company had the least objection.

At that period the consent of this Company was not asked, and the Law Officers of the Crown stated as their opinion that the proper mode for raising the question for discussion would be to embody in a petition to the Queen, any complaints urged against the Company; and they recommended that any such petition should be referred by Her Majesty to the Judicial Committee of the Privy Council. On that occasion it was distinctly stated that the petition must be confined to the subject to which the resolution of the House of Commons of 5th July, 1849, extended—that subject being an inquiry into the legality of certain powers claimed and exercised by the Hudson's Bay Company, under their Charter, but not questioning the validity of the Charter itself.

No petition, however, was then presented, and there the matter rested until the year 1857, when a select Committee of the House of Commons was appointed "to consider the state of the British possessions in America, under the administration of the Hudson's Bay Company, or over which they possessed a license to trade."

In the month of July, 1857, a communication was made to this Company by Mr. Labouchere, the then Secretary of State for the Colonies, calling the attention of the Company to a statement received from the Law Officers of the Crown, having reference solely to the question of the geographical extent of the territory claimed by this Company, as included in the grant by their Charter, recommending that the subject should be referred to the Privy Council, and stating that this could not be done, except by the consent of both parties, namely, Canada and this Company. In reply to this communication, the Governor of the Company informed Mr. Labouchere, under date 18th July, 1857, that the Directors of this Company would be prepared to recommend to their shareholders to concur in the course suggested.

The suggestion now made to the Company, as set forth in the Address to Her Majesty from the Canadian Legislature, and to which my letter of the 12th ultimo had reference, is that they should give their consent to an inquiry before the Judicial Committee of the Privy Council, which inquiry is to involve not merely the question of the geographical boundary of the Territories claimed by them, but to challenge also the validity of the Charter, and, as a consequence, all the rights and privileges which it professes to grant, and which have been exercised by the Company for a period of nearly 200 years.

If such an inquiry should be gone into in the manner suggested by the Law Officers of the Crown, in 1850, the Company will now, as it was then, be prepared to appear on that inquiry, in support of their rights, but in that event no consent on their part will be necessary, nor, as I have already observed, was any consent asked for or suggested when the former inquiry was contemplated. But if the validity of their Charter itself is to be called in question, the Committee feel that in justice to their Shareholders it would be impossible for them to be consenting parties to proceedings instituted with such an object.

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

The Company has at all times been willing to entertain any proposal that might be made to them for the surrender of any of their rights or of any portion of their territory; but it is one thing to consent, for a consideration to be agreed upon, to the surrender of admitted rights, and another to volunteer a consent to an inquiry to call those rights in question.

While, therefore, I and my colleagues in the Direction of the Hudson's Bay Company, are anxious to do all that we can, consistently with our duty to our shareholders, to meet the wishes both of Her Majesty's Government and of the Canadian Legislature, we feel that we cannot return any answer to your letter of the 3rd instant, than that which is conveyed by the letter on the same subject, which I had the honour of addressing to you on the 12th ultimo.

I have, etc.,

H. H. Berens,
Deputy Governor.

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc., etc.

The Attorney-General and Solicitor-General (Eng.) to the Colonial Secretary.*

Temple, 16th December, 1858.

Sir,—We were favoured with your commands signified in Mr. Elliot's letter of the 2nd December inst., in which he stated that with reference to the opinion received from us dated the 30th October, ultimo, relative to certain questions pending with the Hudson's Bay Company, he was directed by you to transmit to us the accompanying copies of a correspondence with that Company, and that we should perceive that the Directors of the Hudson's Bay Company decline to be consenting parties to a reference of the proposed questions respecting the validity and extent of their Charter and respecting the geographical extent of their Territory, to the Judicial Committee of the Privy Council. Under these circumstances it was understood from our former opinion that no other course remains open for trying those questions than a proceeding by *scire facias*.

Mr. Elliot was also pleased to state that you inferred from the views which have been expressed on the subject by the Government and Parliament of Canada, that the Canadian Government will be prepared, if necessary, to take steps for organizing that mode of procedure.

Mr. Elliot was also pleased to request that we would take these papers into our consideration, and favour you with our opinion whether it will be expedient to apply to the Government of Canada to take such steps as may be requisite for the purpose of commencing the proceeding by *scire facias*, and, if so, what those steps should be; or if it should be our opinion that there are any difficulties in the way of the commencement of that proceeding by the Government of Canada, that we would advise what steps should be taken in this country for accomplishing the intended object.

In obedience to your commands, we have taken these papers into consideration, and have the honor to report that the Directors of the Hudson's Bay Company having declined to become parties to the proceeding before the Judicial Committee of the Privy Council, to which they were invited, we apprehend that the only course open for the determination of the questions arising on their Charter, is by *scire facias* brought to repeal the Charter, as suggested in our report of the 30th October ultimo.

This proceeding may be instituted by the Canadian Government in the name of any individual subject of Her Majesty, and we apprehend it will now be proper to ascertain from the Canadian Government whether they are willing and ready to commence such proceeding.

---

*Sess. Papers, Can., 1859, Vol. 17, No. 7.

If the Canadian Government think fit to proceed by *scire facias*, and to authorize some Agent in this country to apply for the writ, there will be no difficulty in obtaining the writ; but we think that, in the first instance, all necessary steps should be taken with the aid of their own legal advisers, by the Canadian Government.

We have, etc.,

FITZROY KELLY,
H. H. CAIRNS.

Sir E. B. Lytton, etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 22nd December, 1858.

SIR,—I duly received your despatch, No. 106, of the 16th August last, and laid before the Queen the Joint Address to Her Majesty, which accompanied it from the Legislative Council and Assembly of Canada, relative to the Territory of the Hudson's Bay Company.

The subject of this Address has occupied my careful consideration, and I transmit to you the copies of a correspondence respecting it, which has taken place between the Company and this Department.

From this correspondence you will perceive that the Hudson's Bay Company decline to be consenting parties to a reference of questions respecting the validity or extent of their Charter to the Judicial Committee of the Privy Council, and under these circumstances the Law Advisers of the Crown, whom I have consulted in the matter, have stated in an opinion, of which I forward a copy, that the only course open for the determination of these questions is by writ of *scire facias* brought to repeal the Charter.

I have, therefore, to request that you will submit the accompanying papers to your Government, and invite them to take steps to obtain the writ in accordance with the suggestion of the Law Advisers; and that you will inform me, as soon as practicable, of the course which the Government of Canada may resolve to adopt in this matter.

Parliament will doubtless meet in the first week of February, and I need not say how desirable it would be if Her Majesty's Government could then be prepared to notify the decision of Canada.

I have, etc.,

E. B. LYTTON.

The Right Honourable Sir E. Head, Baronet,
etc., etc., etc.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET, 28th January, 1859.

SIR,—With reference to former correspondence on the pending questions between Her Majesty's Government and the Hudson's Bay Company, I am directed by Secretary Sir E. Bulwer Lytton, to request you will inform the Directors of the Hudson's Bay Company, that Her Majesty's Government, after the maturest consideration, are not prepared to grant to the Company a renewal for a term of years of the license of exclusive trade which they now enjoy over the Territories of North-Western America, but which is not claimed under their Charter, and not included in British Columbia.

At the same time, regard being had to the proximity of the period at which the pre-

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

sent license will expire, namely, in May next, and the injury to the public interest in the regions comprised in the license which might in the present state of things arise from its termination at that date, Her Majesty's Government are willing to grant the Hudson's Bay Company a fresh license for one year, to commence from the expiration of the present license.

I have, etc.,

CARNARVON.

H. Berens, Esquire.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, February 2nd, 1859.

SIR,—I have the honour to acknowledge the receipt of the Earl of Carnarvon's letter of the 28th ultimo, informing me that Her Majesty's Government are not prepared to grant to this Company a renewal, for a term of years, of the license of exclusive trade over the Indian Territory, but that they are prepared to grant a fresh license for one year commencing from the expiry of the present license.

The subject being one of deep importance, and requiring the consideration of the full Board, the Directors now in London feel that in the absence of the Deputy Governor, who is in Scotland, but who is expected to arrive in London to-morrow, they ought to postpone coming to a decision until they have been able to consult with him. I have, however, called a special meeting of the Committee for Friday next, when the subject will be fully considered, and on Saturday, I hope to have the honour of transmitting to you the result of their deliberations.

I have, etc.,

H. H. BERENS,
Governor.

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc. etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, 8th February, 1859.

SIR,—With reference to my letter of the 2nd instant, I have now the honour to inform you that I have this day laid before the Board of Directors of the Hudson's Bay Company, the letter addressed to me by Lord Carnarvon on the 28th ultimo. His Lordship, by your directions, therein informs me, that Her Majesty's Government are not prepared to grant to the Company a renewal of the license under the Act of 1st and 2nd Geo. IV., cap. 66. But regard being had to the expiration of the present license in May next, and the injury to the public interests in the region comprised in the license which might in the present state of things arise from its termination at that date, Her Majesty's Government are willing to grant to the Hudson's Bay Company a fresh license for one year, to commence from the expiry of the present license.

The Board direct me respectfully to decline that offer. The acceptance on their part of the license for any period of shorter duration than that which has been usually granted since the passing of the Act above mentioned, would, in their opinion, only further

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

increase the inconveniences resulting from the state of suspence in which the question has been kept for the last two years ; so far from strengthening, it would paralyze their authority even within their own Territory, from the impression it would create of the approaching termination of that authority. They do not require, and never have applied for the license for the purposes of their trade. The Act passed at their suggestion in 1821 was intended for the preservation and maintenance of peace and order in the whole of the Indian Territories. These had been grievously compromised by conflicts of the servants of rival traders, whose interests were about that time united ; no means are provided in the Act for the enforcement of its provisions, so as to give additional protection to the trade. The intelligence of the renewal of the license for a year would not even reach a large portion of the posts of the Company before that period had expired.

The Board beg respectfully again to bring under your review the whole of the correspondence and proceedings which have had reference to this subject since their first application, dated December 22nd, 1856, for a renewal of the license.

In consequence of that application, and of the approaching period of the expiration of the existing license, the late Secretary of State for the Colonies, Mr. Labouchere, referred the matter to the consideration of a Committee of the House of Commons. Much evidence was taken before that Committee. The Board, through the medium of their late Chairman, Mr. Shepherd, communicated fully their opinions and intentions with respect to the past and future interests of the Hudson's Bay Company, in a letter to Mr. Labouchere, dated the 18th July, 1857,* which was laid before that Committee. For fear that that letter may have escaped your recollection, they think it essential at this moment, to transmit a copy of it for your information ; no change has taken place in the situation of the Company, nor in any circumstances connected with their affairs, to induce the Directors to change in any respect the course which they have announced to Her Majesty's Government it was their intention to pursue. Nor have they at any time, in any subsequent communication, departed, or intended in any respect to depart, from the principles on which they then intended, and still intend to act.

The Board were then as much aware as they are now of the unpopularity attaching to the existence of the monopoly. That consideration made it more essential that they should weigh with the greatest caution every step in their proceedings which might entail further personal responsibility upon them. No monolopy can be upheld on any ground short of a conviction of its necessity as the best, if not the only means of accomplishing some exceptional object. The Board have therefore entreated that the Government might, in the first instance, decide the question of the maintenance or abolition of the monopoly, either for the present or for any future purposes for which it may be required. If better means can be devised of maintaining order and peace in the Indian country, and for the protection of the Indian Tribes from the evils which have hitherto been found inseparable from competition in the trade, as well as for the colonization and agricultural improvement of the Territory, the question of the abolition of the Hudson's Bay Company should only be one of just indemnity to the shareholders for their legal rights and interests.

If, on the other hand, it should be found impossible to devise better means for the Government of the country, the hands of the Directors should be strengthened to enable them to fulfil the public purposes for which their services have been considered efficient and satisfactory for the last forty years ; any diminution of the confidence and support they have hitherto received from the Government, or even any appearance of it, would weaken their power both with Indians and settlers in the country. The above course would not be inconsistent with any extension of colonization or settlement which either Her Majesty's Government or the Government of Canada can have in view in that part of Her Majesty's dominions now possessed or occupied by the Company, or with the accomplishment of all the objects recommended in the Report of the Committee of the House of Commons.

The Board lamented to see, and have hitherto abstained from adverting to some

* [See this letter, p. 47, *ante*.—G. E. L.]

expressions in your letter of the 3rd November last, imputing to them unreasonable conduct in not accepting some terms of compromise which it is alleged had been offered to them.

In that letter it is stated, "that you entertain an anxious desire to come to some equitable and conciliatory arrangement by which all equitable claims of the Hudson's Bay Company should be fairly considered, in reference to the privileges they may be required to surrender."

Only two propositions have been made to the Board. The first in a letter from Mr. Merivale, under date the 20th January, 1858, by which it was proposed to refer the question of the Company's boundaries to the Judicial Committee of the Privy Council, but distinctly stating that Her Majesty's Government, on public grounds, did not consider themselves authorized to raise the question of the validity of the Charter itself, and that if any parties in Canada proposed to take measures for that purpose, Her Majesty's Government must leave them to take that course on their own responsibility. To that proposition the Board gave their unhesitating consent. The other proposition to this Company which was conveyed by your letter of the 3rd September, 1858, and subsequently by that of the 3rd November following, was to the effect, that this Company should voluntarily concur in some inquiry having for its object to raise the question of the validity of their Charter, and should give facilities for that purpose; thus altogether repudiating the proposition previously received from Her Majesty's Government, and seeking to do the very thing to which on public grounds the Government had previously declined to be a party. This latter proposition therefore the Directors could not, in justice to their constituents, for one moment entertain, and they confidently appeal to all their previous communications with Her Majesty's Government as justifying that refusal.

Both the present Directors and their predecessors in the management of the affairs of the Company, have been advised by lawyers of the first eminence and authority, that the grant of their land and Territories by the Crown was indisputable and unavoidable. As Trustees, they should feel as little justified in consenting to a reference of the proprietary rights of their shareholders as in gratuitously disposing of their property. The conviction of the Directors of the firm position on which they stand, has not been shaken by the opinions of the late Attorney and Solicitor-General, laid before the Committee.

The Board have heard of no "conciliatory arrangement by which the equitable claims of the Hudson's Bay Company may be fairly considered, in reference to the privileges they may be required to surrender." But the Hudson's Bay Company have invariably expressed their readiness to comply with the conditions on which the Committee of the House of Commons recommended the renewal of the license.

They are most willing to concede immediately, or gradually, as the same may be wanted, for the purposes of actual settlement, portions of their Territories on the Red River or Saskatchewan, which may be available for cultivation and settlement, on "equitable principles." They are ready to leave those principles to the decision of Commissioners to be indifferently appointed. They are willing, if it is considered desirable, to remain in temporary possession of those parts of the Territories until adequate arrangements shall be made for their settlement and administration by some other authority, and to concede, in the meantime, lands to settlers on such terms as may be recommended by Her Majesty's Secretary of State, and in any other way to assist Her Majesty's Government in such ulterior views as they may entertain, whether for the purpose of establishing those territories as an independent colony, or of placing them under the Government of Canada.

The Hudson's Bay Company have done what was in their power to promote settlement in such parts of their land as appeared to them most suitable for agricultural improvement. They have been careful at the same time not to involve the capital of the shareholders in hopeless speculations of this description. Their principal object has certainly been the fur trade of the country. They made a grant to Lord Selkirk, who established the agricultural settlement of the Red River, and made arrangements with the Puget Sound Company for same purpose on the territories beyond the Rocky Mountains.

When the disorders and troubles broke out in the Red River country, which led to the union of the North-West and Hudson's Bay Companies, and to the passing of the Act under which the license of trade was granted, it was thought better to put an end to

separate interests, so that the administration both of colony and trade might be conducted under one authority. The Hudson's Bay Company then re-purchased the Red River Settlement, and have since endeavoured to encouarge and protect settlers in it. But owing to the circumstances of the country, the inclemency of the climate, the remoteness of markets, and the difficulty of communication, they acknowledge that their efforts have been attended with but little success.

After the notice given to them in your letter of the 3rd November, of the intention wholly to withdraw the license, the Board had taken measures to adapt the administration of their affairs to the altered circumstances in which they would then be placed. They had decided to diminish their establishments in Canada, and to bring their expenditure within the strict limits required by their trade. Further arrangements of this description will become necessary, if the colony on the Red River is no longer to be dependent on their ships and means of conveyance for supplies.

If, however, the Secretary of State sees fit to reconsider his decision to withdraw the license, the Board will willingly endeavour to concur in any measures by which the hands of the Government may remain unfettered, with respect to any policy which changes in America might hereafter recommend, and the credit and authority of the Company might at the same time be maintained.

For fear of further misunderstanding on that point, they think it right to protect themselves, in a suggestion they would respectfully make to Her Majesty's Government, from any supposition that they still desired the renewal of the license for the purposes of their trade. It is certainly very essential that there should be no interval between the cessation of their authority and the substitution of some other to prevent or regulate, in as far as that may be possible, the interference of strangers with the Indian tribes, and the renewal of the disorders for the prevention of which the Act of 1 and 2 Geo. IV., cap. 66, was passed. The suggestion they would submit to your consideration is, that the license might be renewed to the Hudson's Bay Company for the usual period of 21 years, with a reservation of power to the Crown to withdraw it at any time on a notice of two years. They make this suggestion to shew their disposition to assist the Government in the difficulties which they are fully aware beset this question. But the Board direct me to repeat, that they cannot undertake the responsibility of remaining charged with the care of order and peace in the Indian country, under the temporary grant of a license which would almost carry with it an acknowledgment of the doubts which have been thrown upon their rights, and convey an impression of the weakness and willing submission of the Board to the clamour by which their administration has unjustly been assailed.

I have, etc.,

T. W. Berens.

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc., etc.

The Colonial Secretary to the Governor-General.*

Downing Street, 11th February, 1859.

Sir,—In the course of the interview which passed between Messieurs Cartier, Ross, and Galt, and myself, during the visit of those gentlemen to this country in October last, I understood from them that it was the intention of the Government of Canada to undertake legal proceedings in this country against the Hudson's Bay Company, if that Company should refuse to allow the validity of their Charter to be tested by agreement before the Judicial Committee of the Privy Council.

It was in consequence of this understanding that I addressed to you my despatch of the 22nd December last, informing you of their refusal.

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

It was my hope that I should receive an answer to that despatch, expressing in definitive terms the resolution arrived at by the Canadian Government, before the meeting of the Imperial Parliament, and it now becomes necessary that I should press on you the importance of my receiving such an answer immediately, in order that Her Majesty's Government may determine on the course to be taken by themselves.

I have, etc.,

E. B. Lytton.

The Right Honourable Sir E. Head, Baronet,
etc., etc., etc.

The Under-Secretary to the Governor of the Hudson's Bay Company.*

Downing Street, 9th March, 1859.

Sir,—I am directed by Secretary Sir E. B. Lytton to acknowledge your letter of the 8th February last, conveying on the part of the Directors of the Hudson's Bay Company their refusal to entertain the proposal which he had caused to be submitted to them, that Her Majesty should be advised to renew their license of exclusive trade with the Indians for a year.

Your letter, however, goes also at considerable length into a general statement of the present position of the Hudson's Bay Company, and defence of its conduct ; and it becomes necessary that Sir E. Lytton should enter upon that wider field of discussion, so far at least as may be required in order to justify the proceedings of Her Majesty's Government, before he replies to the more urgent part of your communication.

I am to state at the outset, that Sir E. B. Lytton has received from the Governor of Canada a despatch, copy of which is enclosed, informing him that the Local Government require to consult the Legislature before deciding whether they will or will not undertake legal proceedings against the Company.

Sir E. B. Lytton, in regretting this delay, trusts that it will not be much prolonged. It is obviously due to Canada, on a matter in which she is so much concerned, to grant a reasonable time for a definite answer from the Province ; but as it is also desirable that the whole question regarding the Charter Territories should be settled in the course of the present session, it is Sir Edward's intention to inform the Governor-General of Canada, that if the answer does not arrive by the 1st of May, Her Majesty's Government must feel themselves free to act.

To return to the general subject of your letter.

The late Government, as your letter recites, were willing to test before the Judicial Committee, not the existence but the extent of the rights claimed under the Charter. To this proposal the Company assented. But Canada declined to take part in an enquiry so limited. Whatever the original advantages of such a scheme may have been, the refusal of Canada to take part in the proceedings absolutely nullified it. A decision as to the limits of the Charter waiving the question as to its general validity, could, after that refusal, have bound no one except the mere parties to the proceeding, and would have been practically useless.

That refusal was only conveyed to Sir E. B. Lytton by despatch from Canada of the 16th August last. I am to notice this only to shew that Her Majesty's Government are chargeable with no unnecessary delay, having, notwithstanding the great importance of the subject, allowed as little time as possible to elapse without taking steps in the transaction.

Her Majesty's Government had now to consider what effect they could give to the 13th Resolution of the Committee of the House of Commons, in which, after specifying the principal objects which they thought desirable, added—"How far the chartered rights claimed by the Company may prove an obstacle to their attainment, they are not able

---

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

with any certainty to say. If this difficulty is to be solved by amicable adjustment, such a course will be best promoted by the Government, after communication with the Company, as well as with the Government of Canada, rather than by detailed suggestions emanating from this Committee."

With the best attention which they could give to this recommendation, Her Majesty's Government could not but see that the fairest and most direct method to accomplish it was to test, not the limit, but the validity, of the Charter itself; and they were, and remain, of opinion that this was best done by the consent of the three parties concerned.

Sir E. B. Lytton is well aware of the proposals made by the Company in Captain Shepherd's letter of 18th July, 1857, which are referred to, and a little extended as regards Saskatchewan, in yours, which he is now answering. He must be permitted to say that those proposals, though conceived with the sincerest desire to avoid litigation, by no means met the exigencies of the case.

Those proposals simply were (for the present purpose) to relinquish to Government "land fit for cultivation and the establishment of agricultural settlers,"—land as yet unascertained, and in all probability, for the present, but trifling in extent.

Such an offer he could hardly have considered from the beginning sufficient, but it has become, from subsequent causes (using the phrase without the slightest imputation on the motives of those who made it), illusory. The occupation of British Columbia has rendered more urgent than ever a policy even before that time recommended by the course of events, namely, to connect the two sides of British North America, without the obstacle interposed by a proprietary jurisdiction between them. The difficulty of maintaining the jurisdiction of the Hudson's Bay Company over that intervening region became daily more evident, and the certainty also that if any attempt were made to maintain it, Her Majesty's Government would be called on to furnish the means. On the other hand, it appears to be the general opinion among lawyers, that the monopoly of trade claimed by the Company (under the Charter) is invalid altogether, and that this monopoly could only be defended indirectly, by pushing to extreme limits the consequence of a most invidious territorial grant, enabling the Company, as landlords, to exclude traders as trespassers. Sir E. B. Lytton cannot at all, therefore, agree with the Directors in referring the precarious position of the Company to the mere general unpopularity of monopolies. The weakness of their case arose, and still arises, from causes far more special and urgent, and it was obviously to be apprehended that Her Majesty's Government might, as protectors of the right of her subjects generally throughout the empire, be called on to defend the claimants of assumed rights, which had never been fairly submitted to investigation. It was quite impossible for them to be contented in the interest of the public with such offers as the Company had made, and to leave the general question unsettled; and to settle it without the consent of the Company was at least to be avoided, until that assent had been formally invoked.

It was with this view that the letters addressed to you from this Department, on the 3rd September and 3rd November last, to which you refer, were written; and it was with the same view that Sir E. Lytton endeavoured, during the stay of the Canadian Ministers in England last autumn, to induce them to bring Canada to a decision as to her part in the proceedings to be taken.

And Sir E. Lytton feels it due to himself and his colleagues to disclaim most distinctly the supposition expressed or implied, that the proposal conveyed to the Company in those letters was conceived in any spirit of hostility. On the contrary, it is his conviction now, as it was when those letters were written, that the Directors would consult the interest of their shareholders most effectively by causing it to be accepted. In this way all outstanding questions could be solved. Sir E. B. Lytton felt that if the decision of the Judicial Committee was in favour of the Company, and to the full extent claimed, then the Company would stand in a more advantageous position before the country, in claiming compensation for ascertained rights, if required to relinquish them for the public benefit, than they possibly could at present. If, on the other hand, the decision of that Committee were unfavourable to the Company, they would at all events still possess that claim to equitable consideration to which long usage and the investment of extensive capital on the faith of supposed rights might fairly entitle them; and although Her

Majesty's Government could not of course give any distinct pledge in this latter event, no one acquainted with the general desire of Parliament to do justice to vested interests would be likely to apprehend serious danger.

In short, as the main and perhaps the sole practical difficulty in coming to the most amicable arrangements with the Company appears to lie in ascertaining, not so much the amount of compensation as the principle and mode on which it can be assessed with the approval of Parliament, so that difficulty appeared at once to be surmounted by ascertaining without dispute the nature of the right upon which claims for compensation may be fairly based.

The Directors, however, judged differently from Sir E. B. Lytton on this question. Sir Edward does not question their right to decide as they thought best for the interests of their shareholders. He can only express his regret at a determination which retains the very difficulty in the way of speedy and amicable settlement, which he had sought to remove.

As the case now stands, should Canada resort to legal proceedings, negotiation is of course at an end, until the result of such proceedings is known ; should she refuse to do so, it will then be for Sir E. B. Lytton to consider whether negotiation with the Company can be resumed, or whether, in the last resort, Her Majesty's Government must take the matter into their own hands, and proceed on their own account as they may be advised. But in any case, he can with justice assure the Directors that his determination will be founded on a regard to public interests only, and without the slightest bias of hostility towards the Company.

It remains for me to convey Sir E. B. Lytton's reply to the immediately practical part of your letter, that referring to the renewal of your license over the non-Charter Territories. The Directors reject his offer of a year's license, but they are ready (in the public interest) to accept a renewal for 21 years, terminable at two years' notice.

Sir E. B. Lytton is sorry he cannot meet their views by acceding to this proposal, although he can well conceive, and would indeed desire, arrangements by which the Indian Territory, and all land not likely to be soon colonizable, might be left to the jurisdiction of the Company, provided, on the other hand, the lands adapted for colonization were surrendered to the Crown ; yet, while the latter object remains unachieved, he does not believe that Parliament, or the public, would be inclined or ought to assent to a measure which would give Her Majesty's Government, in concert with the Company, the power of continuing the license for 21 years.

But he wishes to shew every reasonable respect to the argument which you draw from the distance of many of the posts in the license territory, which, by rendering communication with them extremely slow, would make a year's extension of comparatively trifling importance for the purposes in view. The delay in obtaining the decision of Canada may also be fairly taken into consideration as opposing obstacles to arrangements with the Company by which the objection to an ultimate extension of the license might be removed. He is ready, therefore, to make the extension of two years' duration instead of one.

In making this proposal, he believes he is acting in the interest of the Company, even in a pecuniary sense alone ; that, however, is a question for the directors and shareholders, and not for himself. He only refers to it in order to shew how far he is from being actuated by any motives inimical to the Company. But the really important aspect of the question (as the directors will fully agree with him) is that which regards the maintenance of peace and order, and the welfare of the Indian race ; and while he believes that the dangers represented as likely to arise if the trade of the Company ceased to be protected by license are much exaggerated, yet he is desirous to guard against the possibility of such dangers during the interval that must elapse, necessarily without any fault of his own, between the abrupt termination of the Company's jurisdiction in parts so remote, and the establishment of any other machinery for the safety of the Indians which it might be in the power of the Government to devise. He is certain that the Directors will take a similar view of this part of the question, and he is satisfied that if they reject the present offer, they will do so on full conviction, from their own superior knowledge, that no evil consequences are to be apprehended from the sudden termination of their license. But should this be an error in judgment on their part, the responsibility for the consequences will not lie with Her Majesty's Government.

Sir Edward Lytton trusts that as early an answer as practicable may be returned to this letter, as little [time] is left for communicating with the Governor of British Columbia before the termination of the license, and as it may be necessary (in the event of your refusal) to apply to Parliament for an amendment of the present Acts.

I have, etc.,

H. Merivale.

H. Berens, Esquire,
etc., etc., etc.,

The Colonial Secretary to the Governor-General.*

Downing Street,

10th March, 1859.

Sir,—With reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I now transmit to you a copy of a correspondence which has taken place between this Department and the Governor and Committee of that Company, on the subject of the approaching expiration of their trading license in North-Western America. You will observe that, as that license expires in May next, Her Majesty's Government could not avoid entertaining the question, although they would have preferred waiting for the decision of the Canadian Government as to trying the validity of the Charter, in order that the whole subject might be disposed of together.

With respect to this latter question, it is impossible for Her Majesty's Government to allow the present session of Parliament to pass by without endeavouring to use it for the settlement of pending questions. I have, therefore, to add, that unless I receive by the 1st of May next the decision of the Canadian Government and Legislature, whether they will or will not contest the validity of the Charter, Her Majesty's Government must proceed, though with reluctance, to take such steps as to the Charter Territory, whether in the way of negotiation, legislation, or legal proceedings, as they may be advised. Ample care will, however, in any case, [be taken] to reserve and protect whatever claims of right Canada may hereafter establish.

I have, etc.,

E. B. Lytton.

The Right Honourable Sir Edmund Head, Baronet,
etc., etc., etc.

The Governor of the Hudson's Bay Company to the Colonial Secretary.*

Hudson's Bay House,

March 15, 1859.

Sir,—I have the honour to acknowledge Mr. Under-Secretary Merivale's letter of the 5th instant, and lose no time, after consulting with my colleagues, in replying to it. With respect to the chartered rights of this Company, I can only repeat that my colleagues and myself are unanimous in considering that we cannot, in justice to our proprietors, be consenting parties to any inquiry which shall have for its object to challenge the validity of the charter; and we feel convinced that in any discussion that may arise before Parliament, that body will be prepared to act upon the maturely considered opinion which was given by the then Law Officers of the Crown, when the whole matter was submitted to their consideration. I refer to the opinion of Sir Richard Bethell and Sir Henry Kea-

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

ting, in July, 1857, in which they state that "the questions of the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature;" and "that nothing could be more unjust or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years."

They then go on to state, that in their opinion the Crown could not now with justice raise the question of the general validity of the charter, but that on every legal principle the Company's territorial ownership of the lands granted and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations), ought to be deemed to be valid.

The Board are aware that it is competent to the Canadian Government to disregard these principles, however just and well founded; but they cannot but lament to see, by a despatch, under date December 22, 1858, and published by the Provincial Legislature, that the Canadian Government should have been invited by Her Majesty's Government to adopt such a policy—a course so opposed to that which was enunciated by Mr. Labouchere, in his despatch to Sir Edmund Head of the 22nd January, 1858, in which he distinctly states that he did not propose to discuss the question of validity of the claims of this Company over the whole territory known as Rupert's Land, Her Majesty's Government having come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from those principles of equity by which their conduct ought to be guided.

It is to be regretted that delay should arise on the part of the Canadian Government in determining the course which they have thus been invited to take. If such proceedings are ultimately determined upon for the purpose of contesting the validity of the charter, we shall be prepared to maintain the rights of our proprietors.

With regard to your suggestion that the license should be extended for a period of two years instead of for one year, as before proposed, I beg to state that all the material objections to such a proposal which were pointed out in my former letter (8th February, 1859,) with respect to the proposed extension of one year, apply equally to an extension for two years. I beg, however, distinctly to state, that in declining to accept a renewal of the license for a period of two years, that refusal in no way proceeds, as you propose to assume, upon a conviction in our minds that injury to the public interest may not be the consequence of the absence of proper measures for maintaining peace and order in the territories in question; on the contrary, our reason for declining to undertake the preservation of peace upon an extension of the license for the period of two years, only arises from our conviction that such an extension would not secure to the Company a continuance of the weight and influence they have hitherto enjoyed, and to enable them to prevent the threatened mischief so short an extension would be considered as evidence of the intention of Her Majesty's Government to determine their privileges altogether at the end of that term, and would deprive them of all moral influence over the parties frequenting those territories.

We consider that the proposed extension would only give so much more time for excitement and agitation, and would produce a state of things among the unsettled population on the frontier which might with difficulty be controlled by any subsequent administration to be established on the removal of the authority of the Company.

In the opinion of the Board, there is no alternative between maintaining the present system in its former efficiency, or providing by legislation a totally different Government, which should possess the means of ensuring a proper administration in the Indian territories.

Should the latter alternative be decided upon, our Board will lend their most zealous assistance towards promoting any measures which may be adopted for the purpose.

I have, etc.,

H. H. Berens,
Governor.

The Right Honourable
Sir E. B. Lytton, Baronet,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 18th March, 1859.

SIR,—With reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I have now to inform you that the Governor and Directors have finally declined the proposal made to them by Her Majesty's Government, on public grounds, of an extension of their license for two years (instead of one, as originally offered). The correspondence shall be transmitted to you by the next mail, as there is not time for the present.

In May next, therefore, the license will expire, and Her Majesty's Government have now under consideration the steps which it may be necessary to take in consequence of that expiration.

You cannot fail to observe that this circumstance renders the disposal of the pending questions relative to the charter of even more urgent necessity than it was before. The question as to the future management of the license territories and of the charter territories being so closely connected, it becomes even more essential that I should have the immediate answer of your Government, whether it is their intention or not to try the validity of the charter by *scire facias*, and if such is their intention, whether they will at once either send a delegate, or in any other manner initiate the necessary proceedings.

I have, etc.,

E. B. LYTTON.

The Right Honourable
Sir E. Head, Baronet,
etc., etc., etc.

THE UNDER-SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 1st April, 1859.

SIR,—With reference to my despatch, No. 43, of the 18th of March, relative to the affairs of the Hudson's Bay Company, I transmit to you herewith copy of the letter from the Company, in which they decline the extension of their license for two years. This letter completes the correspondence with the Company to the present date.

I have, etc.,

H. MERIVALE,
In the absence of the Secretary of State.

The Right Honourable
Sir E. Head, Baronet,
etc., etc., etc.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

TORONTO, April 4th, 1859.

SIR,—I regret very much that I have not been able before this to send any definite reply to your despatches (the dates and numbers of which are marked on the margin), relating to the charter of the Hudson's Bay Company. The first of these despatches was laid before my Council on the 11th January, and I have repeat-

No. 102.—22nd December, 1858.
No. 25.—11th February, 1859.
No. 37.—10th March, 1859.
No. 43.—18th March, 1859.

* Sess. Papers, Can., 1859, Vol. 17, No. 7.

edly pressed the members of that body for their formal opinion on this important matter. They have frequently discussed the subject, and I fully admit that it is one which requires careful consideration.

I am now, for the first time, able to inform you, that the Executive Council will not advise steps to be taken for testing the validity of the charter by *scire facias*, but they are strongly of opinion that it is most desirable on all accounts that the boundaries of Canada should be accurately and speedily defined.

It is probable that Hudson's Bay Territory will again form the subject of discussion by the Provincial Parliament in the course of the present session.

I have, etc.,

EDMUND HEAD.

The Right Honourable
Sir E. B. Lytton, Baronet,
etc., etc., etc.

JOINT ADDRESS OF THE LEGISLATIVE COUNCIL AND ASSEMBLY OF CANADA TO HER MAJESTY, 29TH APRIL, 1859.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign :

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and Assembly of Canada, in Provincial Parliament assembled, humbly approach Your Majesty for the purpose of representing :—

That having had under consideration the subject of the Hudson's Bay Company, and, in connection therewith, the various despatches from the Colonial Secretary, dated respectively the twenty-second day of December last, the eleventh of February last, the tenth of March last, and the eighteenth of March last, and the Address to Your Majesty by the Legislature of Canada in its last Session, we adhere to the propositions contained in that Address, and desire respectfully to urge them upon the consideration of Your Majesty's Government.

That, in our opinion, Canada ought not to be called upon to litigate the question of the validity of the Charter claimed by the Company, inasmuch as such portion of Territory as the Charter covers is not part of Canada, and is, if the Charter be invalid, subject to Imperial and not Provincial control ; and that, in our opinion, the question of the future of that Territory should not be made to depend on the mere legal view which may be taken by a Court of Law on the validity or extent of the Charter, but that there are considerations involved higher than those of strict legal rights, and which can be dealt with by the Imperial Government alone.

That the formation of a British Province on the shores of the Pacific, and the prospect of immediate and extensive settlement therein, render it of imperative necessity that the vast extent of country lying between that Province and Canada, should come under immediate organization, with a view to colonization.

That while the important objects above alluded to can only be accomplished by the interference and action of the Imperial Government, yet Canada feels that, as a portion of the Empire in whose rule she rejoices, and from the almost direct interest she has in the future of the vast territory contiguous to her on the West, she is justified in urging upon Your Majesty's Government the final disposition of these great questions ; and in doing so, she desires to acknowledge the great interest therein which Your Majesty's Government have already evinced, and the prompt and energetic action which they have taken in the matter.

All of which we humbly pray Your Majesty to take into Your Majesty's most gracious and favourable consideration.

---

* Journals Legislative Assembly, Canada, 1859, p. 454.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC,

March 8th, 1862.

MY LORD DUKE,—I have the honour to enclose to your Grace a Minute of the Executive Council†, approved by myself, in reference to the propriety of taking some steps towards carrying into effect, in the Saskatchewan territory, the provisions of the Act of the Imperial Parliament, 22 and 23 Victoria, Chapter 26.

The Minute states so fully the reasons for present action in this matter in which I fully concur, that I do not think it necessary to trouble your Grace with any observations of my own on the subject.

I have, etc.,

MONCK.

To His Grace the Duke of Newcastle,
etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

16th April, 1862.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 44, of the 8th March, forwarding a Minute of a Committee of the Executive Council of Canada, in reference to the propriety of taking some steps towards carrying into effect, in the Saskatchewan territory, the provisions of the Imperial Act, 22 and 23 Vict., Cap. 26.

This Minute proceeds on an assumption that a certain Act of Parliament was passed in order to organize the Saskatchewan country. But I have to explain that this was not the effect of the Act referred to. It contained an enactment, in the concluding section, that it should not be applicable to territories heretofore granted to the Hudson's Bay Company. Those territories not having fallen under the jurisdiction of Her Majesty's Government, the Act in question does not in any degree facilitate the acquisition or government of the territory claimed by the Company under this grant, nor until the claim of the Company is shown to be groundless will Her Majesty's Government be in a position to take any step in that direction.

I have, etc.,

NEWCASTLE.

Governor the Viscount Monck,
etc., etc., etc.

THE PROVINCIAL SECRETARY TO THE HUDSON'S BAY COMPANY'S GOVERNOR OF RUPERT'S LAND.‡

PROVINCIAL SECRETARY'S OFFICE,

QUEBEC, 15th April, 1862.

SIR,—The Government of Canada have had their attention very strongly directed to the important subject of an overland communication with British Columbia through

---

* Sess. Papers, Can., 1863, Vol. 22, No. 31.

† [This minute does not appear to have been printed.—G. E. L.]

‡ Sess. Papers, Can., 1863, Vol. 22, No. 29.

the Hudson's Bay Territory, *via* the Red River, and I am now commanded by His Excellency the Governor-General to inform you of the steps proposed towards effecting this object, and to seek the co-operation of the Hudson's Bay Company therein.

The Canadian Government do not wish at present to raise any question as to the rights of the Company, who must be regarded as *de facto* in possession of the country intervening between Canada and British Columbia. They consider that most important public interests demand the establishment of a practicable line of communication across the continent, and they desire to have the practical aid of your Company in carrying it into effect.

Arrangements were made within the last four years for postal service with Red River, but the want of territorial rights at Red River and along the greater part of the route defeated the plans of the Canadian Government, and, after a very considerable outlay, the line had to be abandoned. Another effort is now being made in the same direction, and, as the Hudson's Bay Company claims the right of territory and government over this region, it is hoped they will also assume their correlative duties, and unite with Canada in opening up the country.

The Canadian Government are about to establish steam communication with Fort William, on Lake Superior, immediately. A large tract of land at this point has been surveyed, and a Crown Land Agent has recently been appointed to reside there. Appropriations have been made by the Legislature for roads towards Red River, on which free grants will be made to settlers, and every effort will be made to attract settlement—the ultimate object being the connection with the Red River and Saskatchewan. Canada is, therefore, now prepared to guarantee that, so far as her undisputed boundary extends, every facility will henceforward exist towards a communication with the west.

The Canadian Government cannot doubt that the Hudson's Bay Company are fully alive to the vast importance of such a communication.

The recent gold discoveries on the Saskatchewan cannot fail to attract many adventurers, who must at present be principally drawn from the United States.

The Settlement of Red River itself has now its sole communication with Minnesota, and will naturally imbibe American principles and views, unless brought in connection with the British settlements east and west. Canada must look with some apprehension to the probable result that, in a very few years, the population lying to her west will be wholly foreign, and that (unless facilities for settlement be afforded from Canada equal to those enjoyed from the United States, and unless efficient civil government be speedily established) British rule over this part of the continent will virtually have passed away, and the key of the trade to British Columbia, and ultimately China, have been surrendered to our rivals. The Hudson's Bay Company cannot desire a result that would equally militate against their own interests; and the Canadian Government, therefore, hopes for their hearty co-operation in the opening of the Red River and Saskatchewan Territories by a communication from Canada to British Columbia.

The Government of Canada considers that, in connection with the means of transport across the continent, a telegraphic communication should be established as especially necessary for Imperial interests, inasmuch as both the United States and Russia possess telegraphic lines to the Pacific, while Great Britain has no other mode of doing so but through the Hudson's Bay Territory. Recent events have proved the paramount importance of such a line.

Leaving untouched, therefore, all disputed questions, I am commanded by His Excellency the Governor-General to state, that the Canadian Government have decided at once to establish steam and stage communication to the extreme limit of the territory under their government, and are ready to unite with the Hudson's Bay Company in a mail service and post route to British Columbia.

The Canadian Government is also prepared to guarantee the construction of a telegraph line to the extreme western limits of the Province.

I request that you will inform me how far you will be prepared to act for the Hudson's Bay Company in carrying out objects of such great national importance, and which cannot be long delayed without the most serious injury to the interests of the Empire, and especially to the future progress and security of Canada.

I have, etc.,

C. Alleyn.

Alexander G. Dallas, Esquire,
Governor in Chief of Rupert's Land, Montreal.

The Governor of Rupert's Land to the Provincial Secretary.*

Montreal,

16th April, 1862.

Sir,—I have the honour to acknowledge receipt of the important communication which you have addressed to me by command of His Excellency the Governor-General, under date of the 15th instant, wherein you intimate the desire of the Government of Canada to establish an overland communication with British Columbia through the Hudson's Bay Territory, as well as the steps proposed towards effecting that object; and further request the co-operation of the Hudson's Bay Company therein.

After stating that the Government of Canada, regarding the Company as *de facto* in possession of the intervening territories, does not wish to raise any question as to its rights, you proceed to point out the great public interests which are involved by the formation of a chain of settlements, connecting Canada with British Columbia, by postal and telegraphic services, the paramount importance of which is proved by recent events. You also point out the danger of the Red River Settlement, from its close connection with Minnesota, consequent on its isolated position with regard to Canada, becoming imbued with American principles and views, and passing away from us to our rivals, thus depriving the country of the key of the trade to British Columbia, and ultimately to China.

While fully admitting the force of the above arguments, and the immediate necessity of some arrangements being come to, I am reluctantly compelled to admit my inability to meet the Government of Canada in this forward movement, for the following reasons:

First.—The Red River and Saskatchewan valleys, though not in themselves fur-bearing districts, are the sources from whence the main supplies of winter food are procured for the northern posts, from the produce of the buffalo hunts. A chain of settlements through these valleys would not only deprive the Company of the above vital resource, but would indirectly in many other ways so interfere with their northern trade as to render it no longer worth prosecuting on an extended scale. It would necessarily be divided into various channels, possibly to the public benefit, but the Company could no longer exist on its present footing.

The above reasons against a partial surrender of our territories may not appear sufficiently obvious to parties not conversant with the trade or the country; but my knowledge of both, based on personal experience, and from other sources open to me, point to the conclusion that partial concessions of the districts which must necessarily be alienated, would inevitably lead to the extinction of the Company.

Second.—Granting that the Company were willing to sacrifice its trading interests, the very act would deprive it of the means to carry out the proposed measures. There is no source of revenue to meet the most ordinary expenditure, and even under present circumstances the Company has practically no power to raise one. The co-operation proposed, in calling on the Company to perform its co-relative duties, presupposed it to stand on an equal footing with Canada.

---

* Sess. Papers, Can., 1863, Vol. 22, No. 29.

It is not to be supposed that the Crown would grant more extensive powers to the Company than those conveyed by the charter. If any change be made, it is presumed that direct administration by the Crown would be resorted to as the only measure likely to give public satisfaction.

Not having anticipated the present question, I am without instructions from the Board of Directors in London for my guidance. I believe I am, however, safe in stating my conviction that the Company will be willing to meet the wishes of the country at large by consenting to an equitable arrangement for the surrender of all the rights conveyed by the charter.

I shall by the next mail forward copies of this correspondence to the Board of Directors in London, who will thus be prepared in the event of the subject being referred to Her Majesty's Secretary of State for the Colonies.

I may state that it is my intention to make immediate arrangements at the existing settlement of Red River for the sale of land, on easy terms, free from any restrictions of trade. It would, I believe, be impolitic to make any distinction between British subjects and foreigners. The infusion of a British element must be left to the effects of a closer connection and identity of interests with Canada and the mother country.

I have the honour to be, sir,

Your most obedient servant,

A. G. Dallas.

The Hon. Charles Alleyn, Provincial Secretary,
etc., etc., etc.

Report of a Committee of Council, approved by the Governor-General on the 24th April, 1862.*

In reference to the recent correspondence between the Provincial Government and the Governor of the Hudson's Bay Territory on the subject of the proposed overland communication with British Columbia, the Committee respectfully advise that a copy of the same be transmitted by your Excellency to his Grace the Secretary of State for the Colonies.

Wm. H. Lee, C.E.C.

The Governor-General to the Colonial Secretary.†

Government House,

Quebec, April 25th, 1862.

My Lord Duke,—I have the honour to forward to your Grace a Minute of the Executive Council, approved by me, on the subject of the establishment of a postal communication through the Hudson's Bay Territory, between Canada and British Columbia, containing a letter from the Provincial Secretary to the Manager of the Hudson's Bay Company, and that gentleman's reply.

The subject is one of considerable importance, both in an Imperial point of view and as regards the particular interests of this Province; but the letter of Mr. Alleyn enters so fully into the merits of the question on both grounds, that I do not think it necessary to trouble your Grace with any observations of my own.

The answer of Mr. Dallas would seem to imply that the existence of the present rights of the Hudson's Bay Company will prove a permanent obstacle to the realization

* Sess. Papers, Can., 1863, Vol. 22, No. 29. † *Ibid*, No. 31.

of the views which the Canadian Government entertain in reference to the proposed communication.

As the Government of the Province have no means of acting upon the Hudson's Bay Company except through Her Majesty's ministers, I would, on its behalf, ask of your Grace to take such steps as may enable the authorities here to carry into execution their desire for an extension of postal communication between this Province and the shores of the Pacific.

I have, etc.,

MONCK.

His Grace the Duke of Newcastle, K.G.,
etc., etc., etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, May 19th, 1862.

MY LORD DUKE,—I have the honour to enclose, for your Grace's information, copy of a correspondence that has passed between Mr. Charles Alleyn, Secretary to the Government of Canada, and Mr. Dallas, who has lately succeeded Sir George Simpson in the Government of the Hudson's Bay Territory, in North America, on the subject of a proposed road and line of telegraphic communication between Canada and the gold regions of British Columbia.

I take the liberty of forwarding this correspondence to your Grace, because my colleagues agree with me that any negotiation on the subject should be carried on, not with the Colonial authorities, but with Her Majesty's Government in this country.

The Canadian Government propose, in the first instance, to establish steam communication on Lake Superior, and to open up roads from Fort William in the direction of Red River, and they appear to consider that it is the duty of the Hudson's Bay Company to undertake the further prosecution of the work through their territories. Of course there is no difficulty as far as steamers on Lake Superior are concerned, but between Fort William and the height of land the natural difficulties of the country will make road-making a very expensive business, while the soil, which consists chiefly of rock and swamp, will offer no inducement to settlers, even if they obtain the land for nothing.

Within the last few years a considerable sum of money has been granted and expended by the Canadian Government for the purpose of opening this route, but I am not aware that there has been any practical result.

Beyond Red River to the base of the Rocky Mountains the line will pass through a vast desert, in some places without wood or water, exposed to the incursions of roving bands of Indians, and entirely destitute of any means of subsistence for emigrants, save herds of buffalo, which roam at large through the plains, and whose presence on any particular portion of these prairies can never be reckoned on. These again are followed up by Indians in pursuit of food, whose hostility will expose travellers to the greatest danger.

With regard to the establishment of a telegraphic communication, it is scarcely necessary to point at the prairie fires, the depredation of natives and the general chapter of accidents, as presenting almost unsurmountable obstacles to its success.

I have thought it my duty thus slightly to sketch the difficulties in the way of the enterprise, the subject of the correspondence which I have brought under your Grace's notice ; but if it be thought that the interests of Canada and British Columbia, or of this country, require that the experiment should be made, the Hudson's Bay Company will most readily acquiesce in the decision of Her Majesty's Government. At the same time

---

* Sess. Papers, Can., 1863, Vol. 22, No. 31.

it is my duty to state that, in justice to our proprietors, the Directors of the Hudson's Bay Company cannot risk their capital in doubtful undertakings of this description, spread over such vast distances, through a country where the means of maintaining them, if once made, will lead to an expenditure scarcely to be contemplated. Although, therefore, the Directors, on behalf of the Company, are ready to lend Her Majesty's Government all the moral support and assistance in their power, it must be distinctly understood that the Company have no means at their disposal beyond those employed in carrying on their trade, and cannot consequently undertake any outlay in connection with the schemes suggested by the Canadian Government.

I think it may not be improper to take this opportunity of referring your Grace to former communications between the Hudson's Bay Company and the Colonial Office on the subject of settlement in their territories.

The Company have always expressed their willingness to surrender the whole or any part of their territorial rights upon terms that would secure fair compensation to the proprietors, as well as to the officers and employees in the country.

The Governor at Red River Colony has instructions to make grants of land to settlers, on easy conditions, without any restriction as to the Company's right of exclusive trade, and if Her Majesty's Government, with reference to the interests of the public, consider more extensive plans for the improvement of the country expedient, the Directors of the Company will be quite ready to entertain them, with the desire to meet the wishes of Her Majesty's Government in any manner not inconsistent with the vested rights of their constituents.

I am, etc.,

W. Berens,
Governor.

His Grace the Duke of Newcastle, K.G.,
etc., etc., etc.

The Colonial Secretary to the Governor-General.*

Downing Street,

3rd June, 1862.

My Lord,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 79, of the 25th of April last, and to transmit to you for your information a copy of a letter [of 19th May] from the Hudson's Bay Company (received at this department a few days after your despatch reached me) on the subject of establishing postal and telegraphic communication through the Company's territory between Canada and British Columbia.

Although it is not in the power of Her Majesty's Government to grant assistance from Imperial funds for carrying out the object which the Canadian Government has in view, there would be every desire on their part to co-operate in any well-devised scheme for effecting this important communication across the American continent.

As a possible preliminary to such an undertaking, I would direct your Lordship's attention to the facilities for the acquisition of land which the Hudson's Bay Company announce their intention of offering to settlers proceeding to the Red River.

I have, etc.,

Newcastle.

Governor the Viscount Monck,
etc., etc., etc.

---

*Sess. Papers, Can., 1863, Vol. 22, No. 31.

REPORT OF POSTMASTER-GENERAL FOLEY (CANADA).*

POST OFFICE DEPARTMENT,

17th October, 1862.

Referring to the correspondence had with His Grace the Duke of Newcastle, the Canadian Government, and certain of the officers of the Hudson's Bay Company, with reference to the establishment of postal and telegraphic communication through the Company's territories, so called, between Canada and British Columbia, and to his report of 31st of July last, on the subject of postal communication with the North-west, the undersigned has the honour to submit for the consideration of His Excellency the Governor-General in Council, as follows:

The circumstances which for some years past have indicated the expediency of opening up communications westward from Lake Superior derive, in the judgment of the undersigned, additional importance from the recent and continuous intercourse with British Columbia, consequent upon the discoveries there of valuable gold fields; whilst the reported existence of the same precious metal in the fertile valley of the Saskatchewan has had the effect of awakening a yet deeper interest in what in Canada is popularly known as the Red River country. Under so powerful an impulse, a rapid stream of emigration has set towards the Pacific, which gives indications of indefinite expansion in view of the encouraging reports which are constantly received of the richness of the mines and the value of the country as a field for settlement. The shortest and most natural route to these inviting territories lies through the St. Lawrence and its chain of tributary lakes; but owing to the want of facilities for transit beyond the head of Lake Superior, persons destined for the western settlements necessarily make the voyage by sea, or accomplish the first stage in the land journey—Fort Garry on the Red River—by way of Minnesota and Dacotah. Thus it may in truth be said that the people of the neighbouring states hold the key to the British possessions in the west, and while by this means their wild lands are being settled and improved, ours, lying immediately adjacent and quite as well fitted for cultivation, remain a mere hunting ground for the sole benefit and advantage of a company of traders, whose object it is to keep them a wilderness productive only of game, and who, to this end, do all in their power to divert into foreign channels, to the promotion of alien interests, the commerce carried on by them with the outside world.

In the judgment of the undersigned, the time has arrived when more decisive and effective means than have yet been put forth should be employed in opening up and perfecting the communication westward from Lake Superior through British territory. Cut off from intercourse with their fellow-subjects, except on condition of submitting to the inconveniences, the losses, and the numerous vexations of a circuitous journey through a foreign country, and which, on the occurrence of difficulty, would be closed to them, or but afford facility for their invasion, and, under the circumstances, all but certain conquest, the people of the Red River Settlement have for many years past been loud in their expressions of dissatisfaction. Minnesota, and not Canada, is, from imperious necessity, the emporium of their trade; the chief recent additions to their population are from the United States, and their sympathies, in spite of their wishes, are being drawn into a channel leading in an opposite direction from that of the source of their allegiance. In a word, the central link in the chain of settlements which should connect Canada with British Columbia is being rapidly Americanized, and unless a prompt effort be made to advance British interests in that direction, there is reason to fear that incalculable mischief will follow.

The tendencies which have in the main operated in keeping the North-western country closed to the industrial enterprise of the British and Canadian people, may be traced to the alleged obstacles in the way of the construction of practicable roads and the improvement of navigation. Recent explorations, however, prove these obstacles to

* Sess. Papers, Can., 1863, Vol. 22, No. 29.

have been greatly exaggerated. The expeditions of the Imperial and Canadian Governments demonstrate the entire feasibility of establishing communication for postal and telegraphic service, at reasonable rates, through the territories which the Hudson's Bay Company claim as being under their jurisdiction.* . * * * * * *

The undersigned respectfully submits that such a territory ought not to be permitted longer to remain under the sole control of the mere handful of traders, however powerful and influential, who have hitherto monopolized its rich resources, and for so many years barred out all others from a participation in its advantages. Sooner or later their hold upon those portions of it specially suitable to agriculture must be relaxed, and a movement having for its object an end so desirable, is deserving of prompt and liberal encouragement.

In our proceedings hitherto we have been far too tardy. Our apparent indifference and unconcern have been taken advantage of by the Hudson's Bay Company to assert, with continuously increasing pretension, their claims to the entire territory; and to-day it may be said with truth that they feel themselves stronger than ever before in their claims to keep, if they choose, for all time to come, unsettled a vast region in every way suited to human habitation.

Without any suggestion at present as to legal title, it is sufficient that we are invited by His Grace the Duke of Newcastle to join in adopting means to effect the communication on this side to the summit of the pass of the Rocky Mountains, and that while, in his despatch of 3rd June last, he promised the co-operation of the Imperial Government, he afterwards intimated to the House of Lords, on the 4th July last, his hope "that when Parliament met next year he should be able to inform their Lordships that some progress had been made towards the establishment of postal communication between Canada on the one side and New Westminster on the other."

In the opinion of the undersigned, it is not only desirable but essential that advantage be taken of the present favourable disposition of the Imperial authorities.

The late Administration, yielding to the pressure of public opinion, exhibited as well as professed a strong sense of the practical importance of opening up the first link of the route. To this end the subsidies were, from time to time, at their request, readily granted by Parliament; but for some cause or other, whether arising from difficulties occasioned by rival claimants for the performance of the service, or want of judgment in the parties immediately concerned in the application of the funds, or otherwise, it is not for the undersigned here to express an opinion; the means granted by the liberality of the Legislature for a good and useful purpose were worse than wasted, although during the first year, before partisan rivalry had been intruduced, and when real efforts were directed to the solution of the question as to the commercial advantages and the feasibility of the project, success beyond the expectation of the parties engaged was the actual result.

As to the difficulties suggested by the Hudson's Bay Company, through their officers, Governors Berens and Dallas, in the correspondence herein referred to, those gentlemen in truth substantially, though evidently unwillingly, vindicate most strongly the views contended for by the advocates of improvement and colonization.

The first and second of these objections of Governor Berens as to the practicability of the route between Lake Superior and Red River, and the deduction to be drawn from the failure of the projects hitherto encouraged by the Canadian Government, are sufficiently met by what has gone before. His next statement establishes, in the judgment of the undersigned, the very reverse of the conclusions he arrives at, and one finds it difficult to account for his permitting himself to be involved in such manifest inconsistencies as are apparent on the very face of his statement.

Directly in contradiction of the well-authenticated reports of others, among them Governor Dallas, who speaks of the Red River and Saskatchewan countries as the sources of supply of the employees of the Company, Governor Berens describes the country beyond the Red River to the base of the Rocky Mountains as "a vast desert, in some places without wood or water, exposed to the incursions of roving bands of Indians, and entirely

* [The omitted portions of this Report do not touch the matter in issue.—G. E. L.]

destitute of any means of subsistence for emigrants, save herds of buffalo which roam at large through the plains, and whose presence on any particular portion of these prairies can never be reckoned on." "These again," he says, "are followed up by Indians in pursuit of food (a good ground, one would say, for the buffalo not remaining all the time in the same particular places), whose hostility will expose travellers to the greatest dangers." One can well fancy precisely the same reasons being given by interested parties in any uncivilized country against its settlement. The Governor evidently loses sight of his design to prove the territory to be a vast desert, when he adds to that terror those of the Indians and the buffalo.

The early settler in any part of America would tell him that the regions to which the Indians, as well as the buffalo and other wild animals most resorted, were those above all others the most fertile and fitted for cultivation, and just the sections most sought after by the pioneer anxious within the shortest possible period to make for himself, and those dependent upon him, a habitation, and to aid in conquering for his country, with his axe, his spade, and his plough, fresh accessions and contributions to civilization and improvement. The Governor's next fear, namely, that the construction of telegraph lines would be useless because of the probability of their being burnt up, is just as groundless, as is apparent from the fact that over the boundless plains of California, and across the unsettled prairies of Illinois and other States, these almost indispensable accompaniments of civilization are in full, active, and undisturbed operation.

So with respect to the "depredations of the natives, and the general chapter of accidents." These are encountered in every new country, and are not in our day anything like such formidable obstacles as they have been in the past.

On Governor Berens' principle, the settlement of any portion of America was a grave mistake, for at some time or other, and at every place within its vast extent, precisely the same difficulties which he conjures up, in the shape of roving bands of Indians, wild animals, desolation by flood and fire and tomahawk, as well as a "general chapter of accidents," existed over them all. However, the unconquerable white race triumphed, and to its energy and self-sacrificing exertions and indomitable perseverance, the British and Canadian people are indebted for an inheritance such as Providence never before bestowed upon any race since the world began.

If they fail to improve their opportunities, the loss will be proportionate to the advantages otherwise certain of attainment.

Differing from Governor Berens, as well as to the facts as with respect to the style of objection, Governor Dallas puts the whole matter on its true ground when he refers to the Saskatchewan and the Red River countries as the sources whence the Hudson's Bay Company draw their supplies of food; and the simple question in view of his admission is as to whether or not these magnificent territories shall continue to be merely the source of supply for a few hundreds of the employees of a Fur-trading Company, or the means of affording new and boundless contributions to civilization and commerce; whether they shall remain closed to the enterprise and industry of millions in order that the few may monopolize their treasures and keep them for all time to come, as the habitation of wild beasts and the trappers engaged in their pursuit.* * * * *

The question as to what is reasonably to be expected from Canada, is that at present to be considered.

In view of all the facts and circumstances, and feeling that it is on our people that the initiative in the matter rests; that it is to this Province the Imperial Government looks for a commencement of the movement,—a movement demanded alike from our patriotism and our interests—the undersigned considers himself fully justified in submitting, that unless the Government deem it expedient to proceed under the direction of the Honourable the Commissioner of Public Works, as soon as it can be satisfactorily shown that competent and responsible parties are prepared to assume the work, they should propose to Parliament the granting of an annual subsidy of $50,000, or such other sum as His Excellency the Governor-General in Council may deem judicious, for a term of years, towards the undertaking. Should the above suggestion for a subsidy be concurred

* [The omitted part does not affect the question in issue.—G. E. L.]

in, the undersigned will be in a position to submit to His Excellency the Governor-General in Council the details of such arrangements as it may be desirable to make with responsible parties willing to perform the service; but as the question of the construction of works, as well as that of carrying the mails, would be involved, it is expedient that the Honourable the Commissioner of Public Works should be associated with him for that purpose.

All of which is nevertheless respectfully submitted.

M. H. Foley,
Postmaster-General.

Report of a Committee of Council, approved by the Governor-General on the 9th February, 1863.*

The Committee having taken into consideration the Report of the Honourable the Postmaster-General, on the expediency of opening up and better securing communication westward, towards British Columbia, through British territory, for a telegraphic and postal service, concur in the opinion expressed in that Report, as regards the advantage of securing such communication, and humbly advise that a sum of $50,000 be placed in the Estimates of the approaching Session, for the purpose of carrying out the same in the manner suggested in that Report, or in any other that may be deemed more advantageous.

Wm. H. Lee, C.E.C.

The Hon. the Postmaster-General,
etc., etc., etc.

The Governor-General, Lord Monck, to the Duke of Newcastle, Colonial Secretary.*

(Extract.)

Quebec, February 27th, 1863.

I have also the honour to enclose for your Grace's information, a Report of the Postmaster-General of Canada, on the subject of postal communication, through what is termed the North-west Territory, with British Columbia, and a Minute of the Executive Council founded upon it.†

PROPOSAL FOR ESTABLISHING TELEGRAPHIC AND POSTAL COMMUNICATION FROM LAKE SUPERIOR TO NEW WESTMINSTER.‡

Mr. Watkin to the Colonial Secretary.§

21 Old Broad Street,
London, E.C.,
April 28th, 1863.

My Lord Duke,— * * * I have now to enclose proposals, which I trust will

---

* Sess. Papers, Can., 1863, Vol. 22, No. 29.

† [This extract is the only portion of the despatch which appears to have been printed. - G. E. L.]

‡ [The four following papers are inserted here with a view of rendering more clear the references made to the Heads of Proposal in certain of the subsequent correspondence. The omitted portions of the letters of Mr. Watkin and Mr. Fortescue have no bearing upon the matters in controversy. Mr. Watkin is stated to have become, about the time of the date of these proposals, the purchaser of a controlling interest in the stock of the Hudson's Bay Company.—G. E. L.]

§ Sess. Papers, Can., 1863, No. 31.

meet your Grace's approval, for the establishment of a postal and telegraphic route between Canada and the Pacific Ocean.

It is hoped that these proposals will be found to be such as your Grace may be able to recommend, and that their adoption by Her Majesty's Government, by Canada, by British Columbia, and by Vancouver Island, may lead to the completion of the most important work involved, at a very early period. * * * * *

I have to observe that the rate of interest to be secured to the Company, when it was assumed that Her Majesty's Government would take a direct part in the guarantee, was four per cent. as a minimum; but at the same time it was proposed that, in the event of the colonies *alone* becoming responsible, a larger rate of interest would be considered necessary. A reference to the documents will show that this was the case. In the enclosed paper therefore the maximum rate of interest has been taken at five per cent., while a minimum of four per cent. is preserved, and it will be for your Grace, should the colonies decide to accept the proposals, to accord, as between the parties, such a rate, and such a rate only, as the circumstances of the time may render necessary, with a view to securing the absolute success of the undertaking.

I have, etc.,

EDWARD W. WATKIN.

His Grace the Duke of Newcastle, K.G.,
etc., etc., etc.

HEADS OF PROPOSAL FOR ESTABLISHING TELEGRAPHIC AND POSTAL COMMUNICATION FROM LAKE SUPERIOR TO NEW WESTMINSTER, REFERRED TO IN THE FOREGOING LETTER OF 28TH APRIL, 1863.*

The "Atlantic and Pacific Transit and Telegraph Company" propose to establish and maintain communication by electric telegraph, and a mail post, passing at such intervals, fortnightly or otherwise, as shall be agreed upon between a point at the head of Lake Superior and New Westminster, in British Columbia, on the following terms:—

1. That the Imperial Government, the colonies of Canada and British Columbia, and the Hudson's Bay Company, shall each within the territories belonging to them, grant to the Company such land belonging to the Crown or Company, and all such rights as may be required for the post route, telegraph and necessary stations, and for the proper working therof.

2. The line of telegraph shall be divided into proper sections, and so soon as telegraphic communication is established throughout any such section, the colonies of Canada, Vancouver Island and British Columbia will guarantee to the Company a rate of profit on the capital expended at the rate of not less than four nor more than five per cent., provided that the total amount of the capital guaranteed shall be limited at £500,000, and that the total annual payment to be made by Vancouver Island and British Columbia together shall not exceed £12,500; provided also, that the interest accruing upon the money paid up by the shareholders, until the above guarantee shall take effect, shall be reckoned as capital; and provided further, that in case the telegraphic line shall not be completed within five years, unless by reason of war or commotion, or of any interruption not arising from any wilful default of the company, the above guarantee shall be suspended till the line shall be so completed.

3. In case the route shall run through Crown land not within the limits of Canada or British Columbia, nor within the territory claimable by the Hudson's Bay Company, the Company shall be entitled to demand Crown grants to the extent of five square miles for every mile of telegraph line within such Crown land. Such grants shall be demand-

*Sess. Papers, Can., 1863, No. 31.

able as soon as the telegraph communication shall be completed across such Crown land, and the blocks granted shall be adjacent to the telegraph line, and shall be as near as may be five miles square, and shall alternate on each side of the line with blocks of similar size and frontage, which shall remain in the possession of the Crown. The Company is not to sell this land except under effectual conditions of settlement, and in case the undertaking shall be permanently abandoned, the land not so sold is to revert to the Crown.

4. The Company shall not dispose of the telegraph without the consent of the Imperial Government.

5. The Colonial Governments, within their respective limits, or the Imperial Government in any part of the line, may at any time take temporary possession of the telegraph line, in case the public interest requires it, on payment of a rate of compensation to be hereafter agreed, and Government messages shall, at all times when demanded, have priority over all others.

6. The Home Government, with the consent of the parties, will introduce into Parliament such measures as may be requisite to give effect to this proposal.

7. The telegraph and works, and the servants and agents of the Company, shall be considered as under the protection of the Crown and of the Colonial Governments as fully as if in the settled districts of British North America.

8. The Company and its works shall be exempt from all taxation for a period of thirty years.

9. Any further matters of detail, or questions of difference requiring discussion, to be remitted to the sole decision of his Grace the Duke of Newcastle, Her Majesty's principal Secretary of State for the Colonies.

THE UNDER-SECRETARY TO MR. WATKIN.*

DOWNING STREET,

1st May, 1863.

SIR,—I am directed by the Duke of Newcastle to state that he has had much satisfaction in receiving your letter of the 28th ultimo, enclosing the heads of a proposal for establishing telegraphic and postal communication between Lake Superior and New Westminster, through the agency of the Atlantic and Pacific Transit and Telegraph Company. These proposals call for some observations from his Grace. * * *

Article 1.—His Grace sees no objection to the grant of land contemplated in this article, but the "rights" stipulated for are so indeterminate that, without further explanation, they could scarcely be promised in the shape in which they are asked. He anticipates, however, no practical difficulty on this head. * * * *

His Grace apprehends that the Crown land contemplated in Article 3, is the territory lying between the eastern boundary of British Columbia and the territory purporting to be granted to the Hudson's Bay Company by their charter. His Grace must clearly explain that Her Majesty's Government do not undertake, in performance of this article of the agreement, to go to the expense of settling any questions of disputed boundary, but only to grant land to which the Crown title is clear. * * *

Subject to these observations, and to such questions of detail as further consideration may elicit, the Duke of Newcastle cordially approves of the Company's proposals, and is prepared to sanction the grants of land contemplated in the 3rd article.

---

* Sess. Papers, Can., 1863, No. 31.

He intends to communicate the scheme, with a copy of this letter, to the Governor-General of Canada and the Governor of Vancouver Island, recommending the project to their attentive consideration.

I am, etc.,

C. Fortescue.

E. W. Watkin, Esq., etc., etc., etc.

The Colonial Secretary to the Governor-General.*

Downing Street,

1st May, 1863.

My Lord,—I enclose copy of a letter addressed to me by Mr. Watkin on behalf of 28th April, 1863. the "Atlantic and Pacific Transit and Telegraph Company," and transmitting the heads of a proposal made by that Company for establishing telegraphic and postal communication from Lake Superior to New Westminster.

I also enclose copies of the answer which I have caused to be returned to that letter, and of a despatch which I have addressed to the Governor of Vancouver's Island.

From these you will perceive that I value highly the advantages promised by this scheme—taken, as it ought to be, as part of a large scheme for connecting, through British territory, the shores of the Atlantic with those of the Pacific; that I am prepared to accede, on the part of Her Majesty's Government, to the grant of land contemplated in the third article of the "heads of proposal;" and that I have recommended the project to the acceptance of the colonies of British Columbia and Vancouver's Island, subject to such modifications of detail (if any) as further examination may show to be necessary.

With this information, I should wish you to submit the proposal for the consideration of your Government.

I have, etc.,

Newcastle.

Governor Viscount Monck,
etc., etc., etc.

Report of a Committee of Council, approved by the Governor-General on the 18th February, 1864.†

(*Extract.*)

The Committee of the Executive Council have had under consideration a despatch, No. 49, from His Grace the Duke of Newcastle, dated 1st May, 1863, with enclosures, on the subject of a proposal of the "Atlantic and Pacific Transit and Telegraph Com-

---

* Sess. Papers, Can., 1863, No. 31.

† Sess. Papers, Can., 1864, Vol. 23, No. 62.

pany," to establish telegraphic and postal communication from Lake Superior to New Westminster, in British Columbia.* * * * * *

The Committee have not been able to persuade themselves that the people of Canada would be likely to receive benefits corresponding to the cost of constructing a line of telegraph from the seat of government to the head of Lake Superior, and guaranteeing half the interest of the cost of constructing a line from that point to the Pacific Coast, unless at the same time the fertile valleys and plains of the Great North-West are made accessible to Canadian settlers, and to European emigrants, who are in quest of cheap lands under the protection of the British flag and a free Constitutional Government.

A "telegraph line" will not accomplish these objects, though it may serve an important purpose and lead ultimately to their attainment. But unless "The Atlantic and Pacific Transit and Telegraph Company" are prepared to undertake the construction of a road *pari passu* with the telegraph line, the Committee cannot, in the present condition of the Canadian exchequer, and with the important questions of boundary, territorial jurisdiction and form of government in the vast territory proposed to be opened, still unsettled, recommend acceptance of the heads of proposal as submitted by them, and conditionally approved by His Grace.

The Committee are of opinion that in view of the recent change in the constitution and objects of the Hudson's Bay Company, which, from the correspondence laid before the House of Lords, appears to have been effected, and the claims which the new organization have reiterated with the apparent sanction of His Grace the Duke of Newcastle, to territorial rights over a vast region not included in their original Charter, it is highly expedient that steps be taken to settle definitely the North-Western boundary of Canada.

The Committee therefore recommend that correspondence be opened with the Imperial Government with a view to the adoption of some speedy, inexpensive and mutually satisfactory plan to determine this important question, and that the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession, in 1763.

Certified.

Wm. H. Lee, C.E.C.

The Governor-General to the Colonial Secretary.†

Quebec,
19th February, 1864.

My Lord Duke,—I have the honour to enclose a Report of the Executive Council on the proposals of the Atlantic and Pacific Transit and Telegraph Company, transmitted to me with your Grace's despatch, No. 49, of the 1st of May, 1863.

I have, etc.,

Monck.

His Grace the Duke of Newcastle,
etc., etc., etc.

The Colonial Secretary to the Governor-General.‡

Downing Street,
1st July, 1864.

My Lord,—I have had under my consideration your Lordship's despatch, No. 18, of the 19th of February, enclosing to the Duke of Newcastle the Minute of your late

---

* [These and other papers referred to are omitted from this collection as having no bearing upon the matters involved. The omissions from the present document are for the like reason.—G. E. L.]

† Sess. Papers, Can., 1864, Vol. 23, No. 62.

‡ Journals, Legislative Assembly, Can., 1865, Vol. 25, p. 45.

Executive Council on the subject of the pending negotiation between Her Majesty's Government and the Hudson's Bay Company, for the cession of the rights of that Company in the Hudson's Bay Territory to the Crown.

In that Minute the Executive Council say they "are of opinion that, in view of the recent change in the constitution and objects of the Hudson's Bay Company, which, from the correspondence laid before the House of Lords, appears to have been effected, and the claims which the new organization have reiterated, with the apparent sanction of His Grace the Duke of Newcastle, to territorial rights over a vast region not included in their original Charter, it is highly expedient that steps be taken to settle definitely the North-Western boundary of Canada.

"The Committee therefore recommend that correspondence be opened with the Imperial Government with the view to the adoption of some speedy, inexpensive, and mutually satisfactory plan to determine this important question, and that the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

If the proposed cession shall take place, it will be necessary to make provision for the future government of the Red River Settlement, and prospectively of such parts of the Territory as may from time to time become the seats of settled occupation and industry.

The Committee of the House of Commons, which in the year 1857 considered the state of the British possessions in North America which are under the administration of the Hudson's Bay Company, expressed themselves in the following terms :—"Your Committee consider that it is essential to meet the just and reasonable wishes of Canada, to be enabled to annex to her territory such portion of the land in her neighbourhood as may be available to her for the purposes of settlement, with which lands she is willing to open and maintain communication, and for which she will provide the means of local administration. Your Committee apprehend that the districts on the Red River and the Saskatchewan are among those likely to be desired for early occupation. It is of great importance that the peace and good order of those districts should be effectually secured.

"Your Committee trust that there will be no difficulty in effecting arrangements, as between Her Majesty's Government and the Hudson's Bay Company, by which these districts may be ceded to Canada on equitable principles; and within the districts thus annexed to her, the authority of the Hudson's Bay Company would, of course, entirely cease."

Before taking any further steps in the negotiations with the Company, I am desirous of being informed whether your advisers are prepared to assist in these negotiations, with a view of accepting the government of any portion of the territory, and undertaking the duties contemplated by the Committee, in case sufficiently favourable terms can be obtained. If they are prepared to do so, it will be desirable that they should send over to this country some person duly authorized to communicate with me upon the subject, in order that the negotiations may be proceeded with during the recess, and the necessary measures prepared for obtaining the sanction of the Imperial Parliament and of the Legislature of Canada. If they are not prepared to assist in the negotiations, I shall be glad to hear from you their views upon the subject of the north-western boundary of Canada.

I have, etc.,

EDWARD CARDWELL.

REPORT OF A COMMITTEE OF COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 11TH NOVEMBER, 1864.*

The Committee of Council have had under their consideration the despatch of the Right Honourable Edward Cardwell, Her Majesty's Secretary of State for the Colonies, of 1st July, 1864, in reply to your Excellency's despatch of 19th February, 1864, transmitting Minute of Council on the subject of the pending negotiations between Her

* Journals, Legislative Assembly, Can., 1865, Vol. 25, p. 46.

Majesty's Government and the Hudson's Bay Company, for the cession to the Crown of the rights of that Company in the North-Western Territories.

In the Minute of Council transmitted by your Excellency, the Government of Canada recommended that "correspondence be opened with the Imperial Government, with a view to the adoption of some speedy, inexpensive, and mutually satisfactory plan" to "settle definitely the north-western boundary of Canada," and that "the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

Mr. Cardwell, in acknowledging this Minute, remarks, that "if the proposed cession shall take place, it will be necessary to make provision for the future government of the Red River Settlement, and prospectively of such parts of the territory as may from time to time become the seats of settled occupation and industry." He quotes from the Report of the Select Committee of the House of Commons of 1857, in which it is said:—"Your Committee consider that it is essential to meet the just and reasonable wishes of Canada, to be enabled to annex to her territory such portion of the land in her neighbourhood as may be available to her for the purpose of settlement, with which lands she is willing to open and maintain communications, and for which she will provide the means of local administration.

"Your Committee apprehend that the districts on the Red River and the Saskatchewan are among those likely to be desired for early occupation. It is of great importance that the peace and good order of those districts should be effectually secured. Your Committee trust that there will be no difficulty in effecting arrangements as between Her Majesty's Government and the Hudson's Bay Company, by which those districts may be ceded to Canada on equitable principles, and within the districts thus annexed to her the authority of the Hudson's Bay Company would, of course, entirely cease."

And Mr. Cardwell concludes by asking, whether the Government of Canada are prepared to assist in those negotiations with the view of accepting the government of any portion of the territory, and undertaking the duties contemplated by the Committee, in case sufficiently favourable terms can be obtained; and he suggests that if prepared so to do, it would be desirable that some person duly authorized to communicate the views of the Canadian Government, should be sent to England for that purpose.

The Committee of Council recommend that Mr. Cardwell be informed that the Government of Canada is more than ever impressed with the importance of opening up to settlement and cultivation the lands lying between Lake Superior and the Rocky Mountains. The great extent of these lands and their adaptability for settlement are now established beyond a doubt; and it is not to be contemplated that a region so fertile, and capable of sustaining so vast a population, should longer be closed to civilization for the benefit of a trading company, however long established and respectable that company may be. The rapid progress of British Columbia adds to the expediency of opening, without delay, an overland route to the Pacific, and gives feasibility to the hope, long cherished by many, that the Atlantic and Pacific Oceans, ere many years elapse, may be connected by one direct line of railway through British territory, from Halifax to British Columbia. The close relations springing up between the Red River settlers and the Americans of Pembina and St. Paul, and the removal of many Americans into the territory, render it doubly expedient that a settled government, under the British Crown, should be established in the country at an early date. The effort now being made, with every prospect of success, by the Governments of Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, for the union of all these Provinces under one Government, presents another strong reason for settling now the future position of the North-West country, more especially as the parties to the proposed British American Federation have unanimously agreed that the people of the North-West Territory, and of British Columbia and Vancouver, may, at any time, join the Federation on equitable terms, and the whole of British America thus become united in one system of government under the protecting rule of Great Britain.

The Government of Canada is really and anxious to co-operate with the Imperial Government in securing the early settlement of the Territory and the establishment of local government in its settled portions. The Government looks forward with interest

to the day when the valley of the Saskatchewan will become the back country of Canada, and the land of hope for the hardy youth of the Province when they seek new homes in the forest; and it anticipates with confidence the day when Canada will become the highway of immigration from Europe into those fertile valleys. To attain these ends the Government is prepared to render all the aid in its power towards opening up the country.

The Committee of Council are, however, clearly of the opinion that the first step towards the settlement of the territory is the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil or exclusive right of trade. The Committee do not deem it necessary now to raise the question of the validity or invalidity of the Company's charter. Were all the pretensions of the Company as to their title fully admitted for the sake of argument, the necessity of its speedy extinction would still remain. It is not to be entertained for a moment, that half a continent should continue to be shut off from the world on the strength of a parchment title, however good.

The Committee are, however, conscious that it is for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; and while acknowledging with thanks the courtesy of Mr. Cardwell, in inviting the Government of Canada to assist in negotiations with the Hudson's Bay Company for the cession to the Crown of their claims, the Committee are of the opinion that the negotiations will be advantageously left in the hands of the Imperial Government. When the negotiations have been brought to a close the Government of Canada will be ready to arrange with the Imperial Government for the annexation to Canada of such portion of the land in her neighbourhood as may be available for settlement, as well as for the opening up of communications into the territory and providing means of local administration; or should the Imperial Government prefer to erect the territory into a Crown colony, the Government of Canada will gladly co-operate in the opening up of communication into the territory and the settlement of the country.

The Committee express the hope that until the Government of Canada has been communicated with, no cession of large sections of land will be made by the Imperial Government for any purpose, or any right of way granted through the territory. The history of the American continent is replete with examples of the great evils resulting from the locking up of extensive tracts of land in the hands of wealthy corporations, whose whole object is the realization of large profits. The existence of such an evil in these North-Western regions would seriously embarrass the efforts of any Government for the early and satisfactory settlement of the country.

In suggesting that the negotiations with the Hudson's Bay Company should remain in the hands of the Imperial Government, the Committee are anxious that Mr. Cardwell should not interpret this as arising from any diminution of interest on the part of Canada in the just and speedy settlement of this great question; on the contrary, the public interest in the question, and the desire for the early occupation of the country, have of late much increased, and the best proof of this is furnished in the desire unanimously expressed by the recent Conference of the Atlantic Provinces, for a political union with the great Western Territories. The Government will observe the progress of the negotiations with profound interest, and will most gladly communicate with Mr. Cardwell on any point which he may deem proper to submit to it. The Honourable the President of the Executive Council of Canada [Mr. Brown] sails for England on the 16th instant; he has given much attention to the Hudson's Bay question, and will be able to communicate more fully to Mr. Cardwell the views of the Government on the subject, of which he is fully possessed.

Certified.

Wm. H. Lee, C.E.C.

REPORT OF THE HONOURABLE GEORGE BROWN, PRESIDENT OF THE EXECUTIVE COUNCIL OF CANADA.*

QUEBEC, 26th January, 1865.

To His Excellency the Governor-General of Canada in Council.

MY LORD,—I have the honour to report that while recently in England, in compliance with your Excellency's instructions, I placed myself in communication with Her Majesty's Secretary of State for the Colonies, on the subject of opening up to settlement the North-Western Territories.

In your Excellency's despatch of 19th January, 1864, to the Colonial Secretary, the anxious desire of the Canadian Government was communicated "for some speedy, inexpensive, and mutually satisfactory plan for settling definitely the North-Western boundary of Canada," and the claim of Canada was asserted to "all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

In reply to this despatch, Mr. Cardwell, on 1st July, 1864, requested to be informed whether the Government of Canada was prepared to assist in negotiations with the Hudson's Bay Company, with the view of accepting any portion of the territory now claimed by that Company, and providing the means of local administration therein; and he suggested that if so prepared it would be desirable that some person duly authorized to communicate the views of the Canadian Government should be sent to England for that purpose.

On the 11th November, 1864, a Minute of Council was approved by your Excellency, in reply to Mr. Cardwell's despatch. It set forth that the Government of Canada was ready and anxious to co-operate with the Imperial Government in securing the early settlement of the North-West Territories, and the establishment of local government in its settled portions; but that in its opinion the first step towards that end was the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil or exclusive rights of trade. It suggested that it was for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; but that when the negotiations were brought to a close, the Government of Canada would be ready to arrange with the Imperial Government for the annexation to Canada of such portions of the territory as might be available for settlement, as well as for the opening up of communications into the territory and providing means of local administration; or should the Imperial Government prefer to erect the territory into a Crown colony, the Canadian Government would gladly co-operate in the opening up of communication into the territory, and the settlement of the country. The Minute finally suggested that the undersigned, while in England, would communicate more fully to Mr. Cardwell the views of the Canadian Government.

While in London I had the honour of several interviews with Mr. Cardwell, at which the whole question was fully discussed; and I gratefully acknowledge the courtesy and attention extended to me by that gentleman.

I found that negotiations for the cession to the Crown of the territorial claims of the Hudson's Bay Company had been proceeding for a year past between the Colonial Minister and the Company;† and it may not be without advantage that I should state here briefly the point to which these negotiations had been brought:—

I. In July, 1863, the whole interests of the Hudson's Bay Company were transferred to Mr. Edward W. Watkin and certain gentlemen acting with him; and Sir Edmund Head was elected Governor of the Company. The capital stock of the old Company was £500,000 sterling, but at the time of the sale and for some time previous each £100 share

* Journals, Legislative Assembly, Can., 1865, Vol. 25, p. 48.

† [The papers which passed between the parties to these negotiations, during the years 1863 and 1864, do not appear to have been printed (at least in this country), except in so far as they are quoted in the present report.—G. E. L.]

was worth £200 on the London Stock Exchange. The market value of the Company's interests was therefore £1,000,000 sterling. The new Company agreed to pay £1,500,000, and did pay that sum, for the transference to them of all the interests of the old Company.

II. On the 28th of August, 1863, Sir Edmund Head, as Governor of the new Hudson's Bay Company, communicated to His Grace the Duke of Newcastle a resolution expressive of the conviction that the time had arrived for introducing into the North-West Territories the direct authority of the Crown.

III. On the 9th of October, 1863, Sir Frederick Rogers, by instruction of the Duke of Newcastle, informed the Company that His Grace was ready to consider any proposals submitted to him by the Hudson's Bay Company with reference to the introduction of the direct authority of Her Majesty's Government in Rupert's Land.

IV. On 11th November, 1863, Sir Edmund Head acknowledged the receipt of Sir Frederick Rogers' communication, and proceeded to explain the views of the Company in the following terms :—

"With regard to the extent of the proposed colony, of which the seat of government would be Red River (or Fort Garry), the Committee presume that His Grace would wish it to include the whole country from the frontier of the United States to the north branch of the Saskatchewan, and to extend eastward towards Lake Superior, as far as the frontier of Canada, wherever the precise line of that frontier may be found. Perhaps the most convenient limit for the northern boundary would be either the Saskatchewan itself, or a line running from the Rocky Mountains eastward through Edmonton House and Fort Cumberland, and, from the latter, following the Saskatchewan down to Lake Winnipeg. Nothing would be gained by going further to the northward, nor by including the eastern side of Lake Winnipeg; but from the mouth of the Winnipeg River, where it enters the lake, the line of demarcation might be run eastward until it cut the Canadian frontier somewhere north of Lake Superior or Lake Huron."

After hinting at the purchase by Government of the whole territorial claims of the Company for a sum of money, payable down or by instalments—but which he admits is probably an impracticable solution—Sir Edmund Head goes on to propose, as the condition of the Company's consent to the erection of a Crown colony, that "the Company should retain the ownership in fee simple of one-half of the lands in the colony, and the other half should be conveyed by the Company to the Crown." And this compromise he explains the Company suggests, only subject to the following stipulations :—

"1st. The Hudson's Bay Company should have the sole right to erect, and should bind themselves to complete within five years, an electric telegraph to connect British Columbia and Canada. The line for this telegraph should be approved by the Secretary of State, and it should be maintained by the Company, who would, of course, engage to convey the messages of the Imperial and Colonial Governments at a fixed and moderate rate.

"It would be necessary as a condition precedent to the erection of the telegraph,—

"(*a*) That the Government of British Columbia and Canada should pledge their faith respectively to the Secretary of State to pay the yearly sum set forth in the enclosures to the despatch of July 31, 1862, with all the advantages as to lands to be granted by Her Majesty's Government, and other terms therein specified.

"(*b*) That a road should be laid out along the line of telegraph, but the soil on which the telegraph stands, and the space, say one mile in width, on one side of its course, should belong to the Hudson's Bay Company, to be reckoned as part of the half of the land which they would retain. The other side of the road might be included in the half belonging to the Crown.

"(*c*) That the Company, in constructing the telegraph, should be entitled to use wood or other materials taken from ungranted land.

"2nd. The Crown shall resume the grant of mines, and diggings of gold and silver throughout the colony, on condition of paying to the Hudson's Bay Company one-third of the receipts of all dues, royalties, rents, etc., from such mines or diggings, whether raised by way of export duty or otherwise, but the Company should not be liable for expenses of collection or escort.

"3rd. The buildings required for military or Government purposes at Fort Garry or Red River should be valued and purchased of the Company.

"4th. The Company should retain as a portion of their half of the lands, all lots already laid out and surveyed, as well as five thousand acres round each of their forts as posts."

V. On 11th March, 1864, Mr. Chichester Fortescue, Under-Secretary of State for the Colonies, by direction of the Duke of Newcastle, rejected the proposal of the Company. In the course of his communication the following passages occur :—

"In an unsettled colony, there is no effectual mode of taxation for purposes of government and improvement, and the whole progress of the colony depends on the liberal and prudent disposal of its land. These considerations afford decisive reasons against leaving that land in the possession of a corporation. And I am to observe that these objections, conclusive in any case, are greatly enhanced in the case of the Hudson's Bay Company, as I learn from your letter that it has been the 'unvarying opinion' of the Committee on whose behalf you speak that the Company would 'lose fully as much as they would gain by the increase of settlement in the chartered territory.' It is therefore (to say the least) a question whether the Company would not be under a direct inducement to use their proprietary rights to thwart the colonizing efforts of the Government. . . . . The conclusive objection to the scheme is that it would reproduce in a gigantic shape the inconveniences which, on a far smaller scale, were found intolerable in Canada. It is evident as matter of reasoning, and notorious as a matter of fact, that the interposition of large blocks of property between tracts or districts of Crown land must obstruct the opening up of those districts, unless it fortunately happens that the private proprietor is ready to expend money *pari passu* with the Government in the construction of roads and other improvements, and to conform his land policy to that of the authorities. It is also clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community ; and that the diversion of half or more than half of that revenue to the purpose of increasing the dividends of a private corporation would cause a continual and growing discontent which could not be allayed by any abstract argument of right, and the full force of which the Government would be expected by the Company to sustain. His Grace cannot consent to make himself responsible for these consequences, and he is therefore obliged to treat as inadmissible any proposal for the proprietary partition of those territories which may be placed under the Government of the Crown."

Mr. Fortescue then proceeds to state "the only terms which, after very grave consideration, His Grace feels himself able to propose for the acceptance of the Company," as follows :—

"1. That within certain geographical limits (coinciding more or less than those laid down in your letter) the territorial rights of the Company should be surrendered to the Crown.

"2. That the sum of 1*s.* per acre on every acre sold by Government should be paid to the Company, and payment to cease when their aggregate receipts from this source shall exceed £150,000, or on the expiration of 50 years.

"3. That one-fourth of the sum received by the Government as an export duty for gold, or on leases of gold mines, or licenses for gold mining, shall be payable to the Company for 50 years, or until the aggregate receipts shall amount to £100,000

"4. That on these conditions a Government be established in the ceded territories—Great Britain undertaking the expense and risk of that Government until the colony is able to support it, as in British Columbia and other colonies.

"It must be clearly understood that the payments contemplated in the second and third of these articles are entirely dependent on the Government receipts, and that the Government will not be pledged to any particular form of levying a tax upon gold."

Appended to Mr. Fortescue's letter was the following postscript :—

"P.S.—Since the above letter was drafted, His Grace has received from the Governor-General of Canada a despatch, from which it appears that the Canadian Government contemplate the assertion of a claim to all that portion of Central America which can be

shown to have been in the possession of the French in 1763. It must, of course, be understood that the above suggestions are made on the supposition that the cession by the Company will place Her Majesty's Government in possession of an indisputable title to the territory ceded by them."

VI. On the 14th March, 1864, Sir Edmund Head replied to Mr. Fortescue's letter of the 11th March, taking strong exception to the postscript of that letter. Among other passages was the following :—

"We believe the title of the Hudson's Bay Company to be good, and we are prepared to defend it in any court in which it may be impugned ; but we are not prepared to originate any enquiry of the kind, or to undertake to give any guarantee, or to present to the Secretary of State any title other than that which I have already said is as well known to His Grace as it is to ourselves. Such as it is, it must be taken for better for worse, for we have no other to offer, and we believe that to be sufficient. If, therefore, any such guarantee or undertaking is a condition precedent to the completion of an arrangement on the basis suggested in your letter of the 11th instant, it will, we fear, be wholly useless for us to enter into the consideration of the principle of that offer, or any discussion how far the details involved in it are or are not acceptable to the Company, or how far the amount of compensation would be sufficient. If indeed the question were one only of some few miles, more or less, of boundary, the case would be wholly different. But in the form in which the claim is presented to us in your postscript, it appears to the Committee to make all further action impracticable."

Sir Edmund Head goes on to say :—

"But for this preliminary difficulty arising from the postscript to your letter, it would now be my duty to call your attention to the fact that that letter makes no allusion to a substantive portion of our offer, to which we attach great importance, that, namely, of erecting, on certain terms, an electric telegraph across the Hudson's Bay Territory. We have ceded to no one the right to do this, and we are perfectly ready, on fair conditions, and as part of the arrangement, to undertake to do it ourselves. Nor is anything said in the counter-proposal made by you as to the portions of land which the Company might be allowed to retain as private property, nor as to the manner in which their buildings and improvements would be dealt with."

VII. On the 5th April, 1864, Sir Frederick Rogers addressed Sir Edmund Head, in rejoinder to his letter of the 14th March. In reference to the Company's objection to the postscript of Mr. Fortescue's letter, he said :—

"It appears to the Duke of Newcastle that the Company has somewhat misapprehended the intention with which that postscript was written. It is assumed, for the present purpose, that the grant to the Hudson's Bay Company is a valid grant. But it appears to be contended on the part of Canada that, whether valid or not, an instrument which only granted to the Company land not in possession of a foreign power in the year 1670, could not, from its very terms, comprehend, in 1763, a territory which then belonged to the French, and which it is contended must therefore have then belonged and belongs now to Canada. If this claim on the part of Canada were established, it would be evidently impossible for Her Majesty's Government to secure that land to which it is extended, should, when sold, be subject to a payment of 1*s.* an acre to the Hudson's Bay Company. It is therefore impossible for His Grace to make any pledge of this kind except as to land which is beyond the scope of the Canadian claim."

Sir Frederick Rogers, however, then went on to modify somewhat this position. He said :—

"As regards the territories west of the Mississippi, to which the present negotiation in the main relates, the Duke of Newcastle, after a careful examination, is prepared, for the purpose of the present negotiation, to assume that the Canadian claim is groundless. And he therefore authorizes me to renew the proposals contained in the body of my letter of the 11th, subject to the following stipulation :—That in case it should be found advisable to cede or annex to Canada any territory lying eastward of a line passing through Lake Winnipeg, and from thence to and through the Lake of the Woods, Her Majesty's Government should be at liberty to exempt the annexed territory from all payments to the Hudson's Bay Company, which payments would thenceforth be exclusively leviable

(without any deduction from their amount) on the territories acquired by the Crown to the west of the above line of demarcation."

In regard to the second part of Sir Edmund Head's letter of 14th March, Sir Frederick Rogers explained that the Duke of Newcastle was quite willing to recognize the transference to the Hudson's Bay Company of the rights and responsibilities of the Atlantic and Pacific Telegraph and Transit Company—"if it is recognized by the colonies concerned." And he goes on to say, that His Grace "is further willing that on the completion of the road and telegraph from the frontier of Canada to that of British Columbia, lands adjacent to the line shall be granted to the Company at the rate of one square mile for every lineal mile of road and telegraph constructed on Crown lands between the line of demarcation above described and the frontier of British Columbia."

VIII. On the 13th April, the Company accepted the offer of Government in principle, but considered that the amount of the payments within fifty years out of the land and gold revenues should not be limited, or if limited, should be limited to £1,000,000 instead of £250,000. They asked in addition to be allowed—

(1) To retain as private property their "Posts and Stations" (on which buildings had been erected) "outside the Red River Settlement, with an area of 6,000 acres round each such post."

(2) To retain "all lots set out and occupied by them."

(3) To receive for every 50,000 acres of land sold by the Crown, "a grant of 5,000 acres of wild land" of their own choice.

They also require exemption from exceptional taxation and relief from every expense of government.

As the basis of an arrangement for "through communication," they expressed their readiness to adopt Mr. Watkin's plan (modified, as it necessarily would be by the amalgamation of the Hudson's Bay Company, and the Transit and Telegraph Company), but they required five square miles of land per lineal mile of telegraph and road, instead of one square mile as offered by Government.

IX. On the 6th of June, Mr. Cardwell declined to accept these proposals without considerable modifications, but deferred any counter-proposal until after consultation with the Treasury and with the Canadian Government.

This was the position of the negotiation when the undersigned reached London, early in December, 1864, and when Mr. Cardwell placed in his hands the papers of which a summary has been given.

Mr. Cardwell, in explaining verbally the state of the negotiations, added, that in case the Hudson's Bay Company's offer of 13th April, 1864, was accepted by the Government of Canada, as containing in principle a basis on which negotiations might be continued with the hope of a satisfactory solution, he was of opinion that considerable modifications of the terms might be obtained.

That there might be no misunderstanding as to the offer of the Company, I requested that a map might be obtained from Sir Edmund Head, so coloured as to show clearly the territory now claimed by the Hudson's Bay Company as their property; and also a second map so coloured as to show what portion of the land claimed to be theirs, they now proposed to surrender to the Crown. Two maps, coloured in this manner, were accordingly obtained from the Company, and are appended to this report.

Accompanying these maps was a letter from Sir Edmund Head, dated 7th December, 1864, which, without abating his proposal of 13th April, offered as an alternative :—

1. That the Company be paid £1,000,000 sterling.

2. That the Government of British North America acknowledge the Company's right to trade, without exclusive privileges of any kind, within the territory.

3. That the Company should hold in fee simple all their posts now occupied, with a reasonable area round each post. All previous sales and bargains made by them at Red River shall be confirmed.

4. That the Government of British North America shall impose no exceptional taxes on the Company, its property or its servants.

5. That the disputed matter of the Company's lands in Canada be settled by issuing grants on the footing formerly agreed upon between Mr. Vankoughnet and Mr. Hopkins.

6. That the Company shall be bound to hand over to the Government of British North America all the materials for the construction of the telegraph on the payment of the cost price and expenses already incurred.

In discussing with Mr. Cardwell these demands of the Hudson's Bay Company, I pointed out what appeared to me the utterly untenable character of their pretensions. I endeavoured to show that they were seeking to sell to Her Majesty's Government, for an enormous sum, territory to which they had no title under their charter; and I contended that if the solution of the question was to be sought in the purchase of a portion of the Company's territorial claims, the first step was clearly to ascertain what validity there was in those claims—what land the Company really had to sell.

I further stated, as my personal view of the matter, that no solution would be satisfactory to the people of Canada short of the entire extinction of the Hudson's Bay Company's territorial claims and exclusive rights of trade. I pointed out, that to recognize and maintain the exclusive pretensions of the Company over a large portion of the continent, and to give it thereby a monopoly of the lucrative fur trade, would be simply erecting a barrier in the way of the rapid settlement of the country, and laying the foundation for serious difficulty when the country became settled, and for a further demand on the part of the Hudson's Bay Company, some years hence, for the final extinction of its claims.

I urged that in view of the present unsettled position of the American continent, it was of the highest importance to attract to British America as large a share as possible of the European emigration—that the opening up of the North West Territories, with all their agricultural, mineral and fur-trading advantages, would conduce vastly to that end —and that a further delay of this step would (from the immigration of Americans now going on into the territory) render the establishment of British institutions in the settled portions of the country much more difficult than if action were taken now.

Denying the claims set up by the Hudson's Bay Company, I further contended that, even were all their pretensions admitted for the sake of argument, the sum demanded by the Company—namely, one million sterling—was much more than they are entitled to receive for the entire extinction of their claims from the Atlantic to the Rocky Mountains, and from the American line to the extreme north. I pointed out, that it was only eighteen months since the rights of the Hudson's Bay Company had passed by purchase into the hands of the present proprietors; that they paid £1,500,000 for those rights, which was fifty per cent. above the then market value of the property; and I referred to the official prospectus on which the new company was formed in July, 1863, for proof that the demand now made on Her Majesty's Government by the Company was utterly unreasonable. I drew Mr. Cardwell's attention to the fact, that the prospectus declared that the assets of the new Hudson's Bay Company, exclusive of the landed territory, had been "recently valued by competent valuers at £1,023,569 sterling," and that these assets were further explained to consist of "goods in the interior, on ship-board, and other stock-in-trade, including shipping, business premises, and other buildings necessary for carrying on the fur trade." I pointed out that in addition to this large amount of convertible property, "a cash balance" derived from the old Hudson's Bay Company was spoken of in the prospectus; and that other large landed possessions, besides those in the east of the Rocky Mountains and north of the American line, were thus set forth in the prospectus as being part of the property purchased by the new Company.

"In addition to its chartered territory, the Company possess the following valuable landed property:—Several plots of land in British Columbia, occupying most favourable sites at the mouths of rivers, the titles to which have been confirmed by Her Majesty's Government; farms; building sites in Vancouver's Island; and in Canada, ten square miles at LaCloche, on Lake Huron, and tracts of land at fourteen other places."

In addition to all this, I directed Mr. Cardwell's attention to the fact that the Hudson's Bay Company held a claim against the American Government, and which was at that moment under consideration by arbitrators, for the surrender of their rights on the Pacific, south of the boundary line established under the Oregon Treaty. I stated, on information that had reached me, but without personal knowledge of its correctness, that the American Government had expressed its willingness to pay $1,000,000 for the extinc-

tion of that claim, but that the Company rejected it, and were in expectation of receiving a much larger sum.

In view of all these facts, I contended that it was utterly unreasonable on the part of the Company to claim any such sum as £1,000,000 sterling, even for the entire extinction of their territorial and trade claims east of the Rocky Mountains. But I admitted that it was for Her Majesty's Imperial Government to settle with the Hudson's Bay Company the consideration to be paid for the extinction of their claims, as it could not be expected that the people of Canada should bear the burden of extinguishing a monopoly that they did not create and have never recognized, and the advantages from the extinguishing of which they would only share in common with the rest of Her Majesty's subjects. I urged that the Imperial Government should, without delay, secure the extinction of the Company's claims; and that the Government of Canada would be prepared to assume the duty and cost of opening up communications into the country and establishing local government in the settled portions.

I had the honour of interviews with several of Her Majesty's Ministers, who were then in London, in which I was permitted to urge these views to a greater or less extent. But the Christmas holidays having intervened, and being compelled to leave England in time to be present at the opening of the Canadian Parliament on the 19th January, I was unable to press the matter to a close. I therefore suggested to Mr. Cardwell that I would report to your Excellency the point to which the discussion had been brought, and that when the proposed deputation of members of the Canadian Government visited England in spring, the negotiation might be resumed, and, if possible, brought to a satisfactory termination. Mr. Cardwell kindly consented to this arrangement.

I have the honour to be,

My Lord,

Your most obedient servant,

GEORGE BROWN.

REPORT OF A COMMITTEE OF COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 24TH MARCH, 1865.*

The Committee respectfully recommend that four Members of your Excellency's Council do proceed to England to confer with Her Majesty's Government :—

1st. Upon the proposed Confederation of the British North American Provinces, and the means whereby it can be most speedily effected.

2nd. Upon the arrangements necessary for the defence of Canada, in the event of war arising with the United States, and the extent to which the same should be shared between Great Britain and Canada.

3rd. Upon the steps to be taken with reference to the Reciprocity Treaty, and the rights conferred by it upon the United States.

4th. Upon the arrangements necessary for the settlement of the North-West Territory and Hudson's Bay Company's claims.

5th. And, generally, upon the existing critical state of affairs by which Canada is most seriously affected.

The Committee further recommend that the following members of Council be named to form the delegation, viz :—Messrs. Macdonald, Cartier, Brown and Galt.

Certified.

WM. H. LEE, C.E.C.

---

* Journals, Legislative Assembly, Can., 1865, Vol. 23, p. 8.

REPORT OF A COMMITTEE OF COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 27TH MARCH, 1865.*

The Committee have under consideration the Report (hereunto appended) of the Honourable the President of the Executive Council, on the subject of his communications with the Right Honourable the Secretary of State for the Colonies, in London, in reference to the opening up to settlement the North-West Territories.

The Committee respectfully recommend that the negotiations be taken up, by the deputation of Members of Council now about to proceed to London, at the point to which they had been so ably brought by the President of the Council, and carried, if possible, to a successful termination.

Certified.

WM. H. LEE, C.E.C.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.†

DOWNING STREET,
17th June, 1865.

MY LORD,—I have the honour to inform your Lordship that several conferences have been held between the four Canadian Ministers who were deputed, under the Minute of your Executive Council of March 24th, to proceed to England to confer with Her Majesty's Government on the part of Canada, and the Duke of Somerset, the Earl DeGrey, Mr. Gladstone, and myself, on the part of Her Majesty's Government. * * *

On the fourth point,‡ the subject of the North-West Territory, the Canadian Ministers desired that that Territory should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal, undertaking that if the negotiation should be successful, we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement and to guarantee the amount. * * * * * *

I have, etc.,

EDWARD CARDWELL.

Governor-General Viscount Monck,
etc., etc., etc.

REPORT OF THE CANADIAN DELEGATES TO ENGLAND.§

To His Excellency the Right Honourable Viscount Monck, Governor-General of British North America, etc., etc.

May it please your Excellency,

The undersigned having, by Order in Council of 24th March, 1865, been appointed a Committee of the Executive Council of Canada to proceed to England and confer with Her Majesty's Government on certain subjects of importance to the Province, sailed for

---

* Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 54.

† Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 13.

‡ [Namely, the fourth point of the Minute of the Executive Council of Canada of 24th March, 1865, *ante*, p. 111. The omitted portions of the present despatch refer to the other points of that minute, and are therefore not pertinent to the question now at issue.—G. E. L.]

§ Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 9.

England in April last; and having discharged the duty entrusted to them and returned to Canada, we now beg to submit, for your Excellency's information, a statement of our proceedings while in London.† * * * * * *

The important question of opening up to settlement and cultivation the vast British Territories on the north-west borders of Canada next obtained the attention of the Conference. Your Excellency is aware that the desire of the Government of Canada for a satisfactory and final adjustment of this matter has been often formally expressed. In your Excellency's despatch of the 19th February, 1864, to the Colonial Secretary, the anxious desire of the Canadian Government was communicated "for some speedy, inexpensive, and mutually satisfactory plan" for settling definitely "the North-Western boundary of Canada," and the claim of Canada was asserted to "all that portion of Central British America which can be shown to have been in the possession of the French at the period of that cession in 1763."

In reply to this despatch, Mr. Cardwell, on 1st July, 1864, requested to be informed whether the Government of Canada was prepared to assist in negotiations with the Hudson's Bay Company, with the view of accepting any portion of the territory now claimed by that Company, and providing the means of local administration therein; and he suggested that if so prepared it would be desirable that some person duly authorized to communicate the views of the Canadian Government should be sent to England for that purpose.

On the 11th November, 1864, a Minute of Council was approved by your Excellency, in reply to Mr. Cardwell's despatch. It set forth that the Government of Canada was ready and anxious to co-operate with the Imperial Government in securing the early settlement of the North-West Territories, and the establishment of local government in its settled portions; but that in its opinion the first step towards that end was the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil and exclusive rights of trade. It suggested that it was for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; but that when the negotiations were brought to a close, the Government of Canada would be ready to arrange with the Imperial Government for the annexation to Canada of such portions of the territory as might be available for settlement, as well as for the opening up of communications into the territory and providing means of local administration. Or should the Imperial Government prefer to erect the territory into a Crown colony, the Canadian Government would gladly co-operate in the opening up of communication into the territory, and the settlement of the country. The Minute finally suggested that the Honourable President of the Council while in England would communicate more fully to Mr. Cardwell the views of the Canadian Government.

The negotiations that followed on this despatch satisfied us of the impossibility of enforcing the end sought by Canada without long-protracted, vexatious and costly litigation. The Hudson's Bay Company were in possession, and if time were their object, could protract the proceedings indefinitely; and Her Majesty's Government appeared unwilling to ignore pretensions that had frequently received *quasi* recognition from the Imperial authorities. Calling to mind, therefore, the vital importance to Canada of having that great and fertile country opened up to Canadian enterprise, and the tide of emigration into it directed through Canadian channels—remembering also the danger of large grants of land passing into the hands of mere moneyed corporations and embarrassing the rapid settlement of the country—and the risk that the recent discoveries of gold on the eastern slope of the Rocky Mountains might throw into the country large masses of settlers unaccustomed to British institutions—we arrived at the conclusion that the quickest solution of the question would be the best for Canada. We accordingly proposed to the Imperial Ministers that the whole British territory, east of the Rocky Mountains and north of the American or Canadian lines, should be made over to Canada, subject to such rights as the Hudson's Bay Company might be able to establish; and that the compensation to that Company (if any were found to be due) should be met by a loan guaranteed

† [The omitted portions of this Report do not relate to the matters in issue.—G. E. L.]

by Great Britain. The Imperial Government consented to this, and a careful investigation of the case satisfies us that the compensation to the Hudson's Bay Company cannot, under any circumstances, be onerous. It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets,—in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere not included in our arrangement, a very large claim against the United States Government under the Oregon Treaty; and ships, goods, pelts and business premises in England and Canada valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at.

The results of our communications with the Committee of Her Majesty's Government were placed, by Mr. Cardwell, in the form of a despatch to your Excellency; that document bears date the 17th June, 1865, and has already reached your Excellency's hands. It contains a correct statement of the result of the conference. * * *

JOHN A. MACDONALD.
GEO. ET. CARTIER.
GEO. BROWN.
A. T. GALT.

QUEBEC, 12th July, 1865.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,
QUEBEC, 16th August, 1865.

SIR,—I have the honour to transmit for your information copies of papers relating to the opening up of the North-West Territory to settlement and legislation, which I have caused to be laid before both Houses of the Legislature of Canada.†

I have, etc.,
MONCK.

The Right Honourable
E. Cardwell, M.P., etc., etc.,
Secretary of State.

MR. MCEWEN TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.‡

5 NICHOLAS LANE, LOMBARD STREET, E.C.,
LONDON, 18th Jan., 1866.

SIR,—Will you permit me to enquire, on behalf of self and friends, whether the Hudson's Bay Company is at liberty and is willing to dispose of its cultivable territory to a party of Anglo-American capitalists, who would settle and colonize the same on a system similar to that now in operation in the United States, in respect to the organization of Territories and States?

If so, perhaps you will state whether you are also ready to make or to receive, with the intention of business, a proposition for the absolute sale of the same.

I have, etc.,
ALEX. MCEWEN.

Sir Edmund Head,
Governor Hudson Bay Company,
Fenchurch Street.

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.
† [It does not appear what these papers were.—G. E. L.]
‡ Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

THE SECRETARY OF THE HUDSON'S BAY COMPANY TO MR. MCEWEN.*

HUDSON'S BAY HOUSE,
LONDON, 24th January. 1866.

SIR,—Your letter of January 18th was received and laid before the Governor and Committee at their meeting on the 23rd inst.

I am directed by them in reply to inform you that they are quite ready to entertain and consider favourably any proposal for purchasing a portion of the Company's Territory for the purpose of colonization.

With respect to the organization of the Territory to be settled, the Hudson's Bay Company would be desirous of faciliating such organization by the exercise of any power which they lawfully possess. As Rupert's Land is a British colony, the concurrence of Her Majesty's Government on the part of the Crown would be necessary in the establishment of any Government; but the Governor and Committee see no reason to suppose that any obstacle would arise on this account.

I am, etc.,

THOMAS FRASER,
Secretary.

Alex. McEwen, Esq.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.†

HUDSON'S BAY HOUSE,
LONDON, 6th February, 1866.

SIR,—I have the honour to enclose certain papers for the information of the Right Honourable the Secretary of State:

A.—Extract from a letter addressed to the Secretary of the Hudson's Bay Company by William Mactavish, Esq., Governor of Rupert's Land, dated Nov. 13th, 1865.‡

B.—Copy of a letter addressed to Secretary of Hudson's Bay Company, by Mr. Alexander McEwen, dated January 18th, 1866.

C.—Copy of answer to the same, sent by order of the Governor and Committee, and dated January 24th, 1866.

With regard to Mr. Mactavish's letter it will be observed that Vermilion Lake is in the United States Territory, a little south of Rainy Lake.

I have, etc.,

EDMUND HEAD.

T. F. Elliot, Esq.,
Colonial Office.

THE UNDER SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.§

DOWNING STREET,
20th February, 1866.

SIR,—I am directed by Mr. Secretary Cardwell to acknowledge the receipt of your letter of the 6th inst., enclosing a copy of one addressed to you by Mr. McEwen, enquiring if the Hudson's Bay Company are willing to dispose of such portion of their Territory as is capable of cultivation to a party of Anglo-American capitalists.

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

† Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

‡ [This extract has reference only to alleged gold discoveries on Vermilion Lake.—G. E. L.]

§ Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

You also enclose a copy of the reply which the Company have returned to this enquiry.

Having regard to the reference you have made in your letter to the probable concurrence of Her Majesty's Government in the establishment of some new government, Mr. Cardwell is desirous of reminding you that at the conferences which took place during last summer, between the Canadian Ministers and certain members of Her Majesty's Government, the Provincial Ministers expressed their desire that the North-Western Territory should be made over to Canada, and they undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. To this proposal, Her Majesty's Ministers assented, engaging that if the negotiation should be successful, they, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and guarantee the amount.

Until this engagement shall have been disposed of, it will be necessary for Her Majesty's Government to keep it in view in any steps which they may be called upon to take in the matter.

I am, etc.,

E. E. Forster.

Rt. Honourable Sir E. Head, Bart., etc., etc.

The Colonial Secretary to the Governor-General.*

Downing Street,
24th February, 1866.

My Lord,—I have the honour to transmit to your Lordship a copy of a letter, 6th February. with its enclosures from the Governor of the Hudson's Bay Company, 20th February. relative to a proposal for purchasing such portion of the Company's Territory as may be capable of cultivation by a party of Anglo-American capitalists.

I also enclose a copy of a reply which I have returned to Sir Edmund Head.

I have, etc.,

Edward Cardwell.

Governor the Right Honourable
Viscount Monck.

The Governor of the Hudson's Bay Company to the Under Secretary.*

Hudson's Bay House,
London, March 1st, 1866.

Sir,—I have the honour to acknowledge your letter of the 20th instant.

I beg to assure the Secretary of State that the Committee of the Hudson's Bay Company have never lost sight of the fact, that an arrangement for transferring their rights to Canada was contemplated as possible, although no action or engagement has been yet taken on the part of the Company, except so far as to express a readiness to consider any offer which may be made.

The letter to Mr. McEwen intended only to say that the Company would be ready to exercise its lawful powers for the protection of the colonists, and the organization of a settlement in their territory. If those powers shall have been previously purchased by Canada, or assumed by Her Majesty's Government, their exercise will not be needed, because there will then be another government in existence. If such powers were still

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

in the hands of the Company, the Committee ventures to think that the Right Honourable the Secretary of State would probably concur in any lawful exercise of them which might be necessary for the good of settlers.

Irrespective of any question of the government of the Territory, the Committee presume that they are at the present time in nowise hampered in the disposal of their private property in lands by sale. At the same time, I would venture most respectfully to enquire for how long a period the option, if it may be so called, which has been given to Canada, is supposed to remain open.

On the 29th June, 1865, I assured the Secretary of State of our readiness to consider any offer made in pursuance of the agreement between Her Majesty's Government and the Canadian deputation. Since that time, so far as the Committee know, the only step taken has been the publication of a report made to the Governor-General of Canada, by one of the deputation, in which, as it appears to the Committee, the rights of the Company are disputed, and the value of its property systematically depreciated.

If indeed the action of the Company with reference to its rights of private property (as distinguished from its rights of government) is in any degree fettered or suspended by the existence of the agreement of Her Majesty's Government with that of Canada, the question of delay, and the possibility of losing a favourable opportunity for sales, may become a very grave one in a pecuniary point of view. This is more especially the case, because in the agreement the words "if any" are expressly inserted in connection with the proposed compensation.

So far, therefore, as that agreement is concerned, the Company, after all, may be held entitled to no compensation for their rights, public or private. It is difficult to see how a stipulation of this very contingent character, not entered into by the Company themselves, can, with any fairness, be considered as interfering with its right to deal with its own property.

It is scarcely necessary for me to say, that the final acceptance of any offer made by Canada or by any other party, would depend, not on the Committee, but on the body of shareholders, to whom that property belongs.

I have, etc.,

EDMUND HEAD,
Governor.

To E. Forster, Esq., M.P.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
3rd March, 1866.

MY LORD,—With reference to my despatch of the 24th ultimo, No. 18, forwarding copies of a correspondence between the Governor of the Hudson's Bay Company and this Office on the subject of a proposal addressed to that Company by Mr. McEwen, for the purchase of a portion of the Hudson's Bay Company's Territory in British North America, I have the honour to transmit to your Lordship a copy of the reply which Sir Edmund Head has returned to the letter written to him by my direction on the 20th ultimo.

I have to request that your Lordship will communicate this reply of Sir Edmund Head to your confidential advisers, and state that I shall be glad to be favoured with their wishes on the subject of the proposed purchase by Canada of the rights of the Hudson's Bay Company.

I have, etc.,

EDWARD CARDWELL.

Governor Viscount Monck.

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

REPORT OF A COMMITTEE OF COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 22ND DAY OF JUNE, 1866.*

The Committee of the Executive Council have given their careful consideration to the despatches of the Secretary of State for the Colonies, bearing date the 24th February and 3rd March last, relative to a proposal made to the Hudson's Bay Company by a party of Anglo-American capitalists, for the purchase "of such portion of the territory claimed by the Company as may be capable of cultivation;" and they have the honour to submit to your Excellency the following remarks on the subject:—

In the first place, the Committee do not admit that the Company have a legal title to that portion of the North-Western Territory which is fit for cultivation and settlement.

This fertile tract is a belt of land stretching along the northern frontier of the United States to the base of the Rocky Mountains, and Canada has always disputed the title of the Company to it.

Even if it be admitted that the Charter of 1670, recognized as it has been by several Imperial Statutes, gives to the Company a freehold right in the soil in Rupert's Land, Canada contends that the cultivable tract in question forms no part of that land.

It is not now necessary to repeat the grounds on which this opinion is founded, as they have been already more than once submitted to Her Majesty's Government, and it is only alluded to lest silence on the subject might be assumed as an acquiesence on the part of Canada in the right of the Company to sell. Assuming, however, that such right exists, the Committee see grave objections to the proposition of Mr. McEwen being entertained. Canadian experience has shown that sales of large tracts of land to individuals, or commercial corporations, have operated prejudicially to the best interests of the Province, and retarded rather than promoted its settlement and progress. Companies or individuals purchasing for the purpose of speculation, are governed solely by the one view of obtaining a profitable return of the money invested in the purchase. All other considerations are set aside. No general or comprehensive system of settlement is or can be established. The best tracts are withheld from settlement in order that their value may be increased by the improvement of the surrounding country, and by the labour of the settlers, and the price paid to the Company for the lands, instead of being expended in the opening up of roads and in developing the resources of the country, is divided among a number of non-resident shareholders having no interest in the prosperity of the country further than as such prosperity contributes to the value of their shares.

In the correspondence which took place in 1863 and 1864 between the Hudson's Bay Company and the Colonial Office, with reference to the introduction of the direct authority of Her Majesty's Government in Rupert's Land, it appears that the Company proposed, as a condition of their assenting to the erection of a Crown colony, that they should retain the ownership in fee simple of one-half of the lands of the colony. This proposition was rejected by the Duke of Newcastle, in language which appears to the Committee to be conclusive:

"In an unsettled colony there is no effectual mode of taxation for purposes of government and improvement, and the whole progress of the colony depends on the liberal and prudent disposal of its land. These considerations afford decisive reasons against leaving that land in the possession of a corporation. And I am to observe that these objections, conclusive in any case, are greatly enhanced in the case of the Hudson's Bay Company, as I learn from your letter that it has been 'the unvarying opinion' of the Committee on whose behalf you speak that the Company would 'lose fully as much as they would gain, by the increase of settlement in the chartered Territory.' It is therefore, to say the least, a question whether the Company would not be under a direct inducement to use their proprietary rights to thwart the colonizing efforts of the Government. . . . . The conclusive objection to the scheme is that it would reproduce in a gigantic shape the inconveniences which, on a far smaller scale, were found intolerable in Canada. It is evident as a matter of reasoning, and notorious as a matter of

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

fact, that the interposition of large blocks of property between tracts or districts of Crown land must obstruct the opening up of those districts, unless it fortunately happens that the private proprietor is ready to expend money *pari passu* with the Government in the construction of roads and other improvements, and to conform his land policy to that of the authorities. It is also clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community, and that the diversion of half or more than half of that revenue to the purpose of increasing the dividends of a private corporation would cause a continual and growing discontent, which could not be allayed by any abstract argument of right, and the full force of which the Government would be expected by the Company to sustain. His Grace cannot consent to make himself responsible for these consequences, and he is therefore obliged to treat as inadmissible any proposal for the proprietary partition of those territories which may be placed under the government of the Crown."*

If such objections exist to the tenure of large tracts of land by so ancient and responsible a corporation as the Hudson's Bay Company, with large powers of government, and a political as well as a commercial status, with how much greater pressure must they weigh against the transfer of such tracts to a private association of speculators.

The Committee are further of opinion that before any steps are taken to introduce a large body of settlers into that country, provision should be made for the efficient administration of the government there.

So long as the Great North-West is only occupied by the Hudson's Bay Company's servants, and by the few scattered settlers at Fort Garry, the system of government now obtaining there may work sufficiently well; but whenever a large population shall settle in the country, it is to be feared that the Company's power will be altogether insufficient to preserve order and good government, and that its authority will be set at nought.

It is evident that the old policy of exclusion of strangers from the Territory must shortly be at an end.

The neighbouring territories belonging to the United States are fast being settled up to the boundary line, and if the statements as to the existence of gold in the Valley of the Saskatchewan be at all verified, there will, ere long, be an influx of population which no power that can be exerted by the Hudson's Bay Company can either resist or control. This population will mainly come from the United States, and although there may be a good many of Her Majesty's subjects among them, by far the greater portion will be aliens, ignorant and regardless of the laws of England, and perhaps hostile to the British Government. They will utterly disregard the authority of the Company, will endeavour to establish a government and tribunals of their own, and, as similar bodies have done elsewhere on this continent, assert their political independence.

Such a community would sever the British North American possessions in twain and be the means of retarding, if not altogether preventing, the formation of a railway connection between the Atlantic and Pacific Oceans.

The future interests of Canada and all British North America are, therefore, vitally concerned in the immediate establishment of a strong Government there, and in its settlement as a part of the British colonial system.

Impressed with this conviction, Canada would ere this have opened negotiations with the Hudson's Bay Company for the extinction of their claims, had it not been for the prospect of her speedy absorption in the proposed Union of the British North American Colonies. It would obviously have been improper for the Canadian Government to commence negotiations which they could not hope to complete, or to enter into engagements, the fulfilment of which must fall on the, whole Confederated Provinces. At the same time, the Committee beg leave to observe that if the Company had thought proper to submit for consideration formal proposals for the transfer of their claims, the final settlement of the question would have been greatly advanced.

* [From letter of Mr. Fortescue, Under-Secretary of State for the Colonies, of 11th March, 1864 quoted in Report of Hon. George Brown, *ante*, p. 107.—G. E. L.]

Recent events serve to shew that in a few months that union will be effected, and the Committee have no doubt that the Confederate Government and Legislature will feel it to be one of their first duties to open negotiations with the Hudson's Bay Company, for the transfer of their claims to th e territory. Meanwhile Canada invites the aid of Her Majesty's Government in discountenancing and preventing any such sales of any portion of the territory as is now applied for.

W. H. Lee, C.E.C.

The Governor-General to the Colonial Secretary.*

Government House,
Ottawa, 23rd June, 1866.

Sir,—Referring to your despatches (Nos. 18 and 20) of February 24th and March 3rd, I have the honour to transmit, for your information and consideration, an approved Minute of the Executive Council of this Province, on the subject of the Hudson's Bay Territory.

I have, etc.,
Monck.

The Right Honourable
Edward Cardwell, M.P., etc., etc.,
Secretary of State.

The Governor of the Hudson's Bay Company to the Under Secretary.*

Hudson's Bay House,
London, 17th July, 1866.

Sir,—I have the honour to enclose, for the information of the Right Honourable the Secretary of State, a copy of a pamphlet which I received on the 12th instant.

This pamphlet purports to be a report addressed to the Secretary of the Treasury of the United States, and it contains certain statements to which the Committee of the Hudson's Bay Company desire to call the special attention of the Earl of Carnavon.

At page 26 the following passage occurs :—

"Twenty years later, in 1865, the American territory of Montana adjoins the region which excited the enthusiasm of DeSmet. Its population of 25,000, to be increased during 1866 to 50,000, have been drawn to the sources of the Missouri by discoveries of gold and silver mines close to the international border, and rumours of gulches and ledges in the Saskatchewan District, yielding even greater prizes to the prospector, are already rife, and will soon precipitate a strong, active and enterprising people into the spacious void. What is called the 'Americanization' of the Red River Settlements has been slow, although sure, since the era of steam navigation ; but the Americanization of the Saskatchewan will rush suddenly and soon from the camps of treasure-seekers in Montana."

You, Sir, are aware of the correspondence which during the last three years has passed between myself as Governor of this Company and the Colonial Office, on the subject of establishing in the Hudson's Bay Territory some government administered in the name of Her Majesty. You know also that Mr. Cardwell decided to offer to Canada an option of acquiring the rights of this Company, and that so far back as the 1st of March last I ventured respectfully to ask the question (which has not yet been answered) how long this option was to remain open.

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

In a letter addressed to me by Mr. Forster, and dated the 20th of February last, we were told:—

"Having regard to the reference you have made in your letter, to the probable concurrence of Her Majesty's Government in the establishment of some new government, Mr. Cardwell is desirous of reminding you, that at the conferences which took place during last summer between the Canadian Ministers and certain Members of Her Majesty's Government, the Provincial Ministers expressed their desire that the North-Western Territory should be made over to Canada, and they undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada, under the Imperial guarantee. To this proposal Her Majesty's Ministers assented, engaging that if the negotiation should be successful, they, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and guarantee the amount.

"Until this arrangement shall have been disposed of, it will be necessary for Her Majesty's Government to keep it in view in any steps which they may be called upon to take in the matter."

Under these circumstances, it is clear that the Company thus cautioned can take no steps of themselves to meet any inroad or immigration within their territory, if it be on their territory that it will first take place—a point to which I shall afterwards revert.

Indeed, the powers of the Charter were probably not given to be used for any such purpose; but if they were sufficient for such an emergency, our hands are at the present moment tied by Mr. Forster's letter.

We think, therefore, that we are the more bound most respectfully to suggest whether, if it is intended to retain the territory north of the 49th parallel as British soil, some steps ought not to be taken for asserting its British character, and maintaining law and order within it.

This may, no doubt, either be effected by the direct action of the English Government, or be attempted by the agency of Canada; but as we understand the latter course to have been deliberately selected, the Committee (provided this Company are fairly dealt with in the matter of compensation) can have no right to offer any remarks on the subject.

In the face, however, of the confident predictions and statements contained in this report to the Secretary of the United States Treasury, we should not be justified if we failed to point out the necessity of speedy action of some kind.

With regard to the particular strip of country where the first overflow of settlers or miners may be expected from the United States Territory of Montana, I think it probable that the Hudson's Bay Company have no immediate interest or responsibility connected with it. So far as I can judge from the imperfect maps accessible to us, I believe that on the north of Montana there is a narrow belt running along the 49th parallel, watered by streams, which fall not into Hudson's Bay but into Milk River, a tributary of the Upper Missouri. If this be so, this strip of land, though British ground, as being north of the 49th parallel, is not included in the grant made by the charter of Charles II. to the Hudson's Bay Company.

I have, etc.,

EDMUND HEAD,
Governor.

Sir Frederic Rogers, Baronet,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 1st August, 1866.

MY LORD,—I have the honour to transmit to you, to be laid before your responsible advisers, the accompanying copy of a letter from the Governor of the Hudson's Bay Company, enclosing, in the form of a pamphlet, a letter from the Secretary of the United States Treasury, in answer to a Resolution from the House of Representatives, calling for information in regard to commercial relations with British America.

I have, etc.,

CARNARVON.

Governor the Right Honourable Viscount Monck,
etc., etc., etc.

THE BRITISH COLUMBIA ACT, 1866.†

(Extracts.)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The British Columbia Act, 1866."

2. In this Act the term "Governor" means any officer for the time being lawfully administering the government.

3. From and immediately after the proclamation of this Act by the Governor of British Columbia, the colony of Vancouver Island shall be, and the same is hereby united with the colony of British Columbia, and thenceforth those two colonies shall form and be one colony, with the name of British Columbia (which union is in this Act referred to as the union).

4. On the union taking effect, the form of government existing in Vancouver Island as a separate colony shall cease, and the power and authority of the Executive Government and of the Legislature, existing in British Columbia, shall extend to and over Vancouver Island; but in order that provision may be made for the representation of Vancouver Island in the Legislature of British Columbia after the union, the maximum number of councillors in the Legislative Council of British Columbia, after the union, shall, until it is otherwise provided by lawful authority, be twenty-three instead of fifteen.

7. Until the union, British Columbia shall comprise all such territories, within the dominions of Her Majesty, as are bounded to the south by the territories of the United States of America; to the west by the Pacific Ocean and the frontier of the Russian territories in North America; to the north by the sixtieth parallel of north latitude; and to the east from the boundary of the United States northwards by the Rocky Mountains and the one hundred and twentieth meridian of west longitude; and shall include Queen Charlotte's Island, and all other islands adjacent to the said territories, except Vancouver Island and the islands adjacent thereto.

8. After the union, British Columbia shall comprise all the territories and islands aforesaid, and Vancouver Island and the islands adjacent thereto.

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

† Imperial Act, 29 & 30 Vict. c. 67. Assented to 6th August, 1866.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY. *

GOVERNMENT HOUSE,

OTTAWA, 18th August, 1866.

MY LORD,—I have the honour to acknowledge the receipt of your despatch (No. 15) of the 1st instant, transmitting copy of a letter from the Governor of the Hudson's Bay Company, respecting the proposed purchase by the Canadian Government of the territorial rights of that Company.

I shall not fail to bring before my advisers your Lordship's despatch and enclosure; but I wish to remark, for your information, that this is one of the subjects upon which it is considered undesirable to decide, pending the discussion of the Union of the Provinces of B.N.A.

As the completion of that Union may now be looked for at an early day, I trust the solution of the difficulties which surround the position of the Hudson's Bay Company may also soon be attempted.

I desire to make this statement, in order to explain to your Lordship, by anticipation, any delay which may occur in answering your despatch.

I have, etc.,

MONCK.

The Right Hon. the Earl of Carnarvon,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL. *

DOWNING STREET,

8th September, 1866.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 124, of the 18th August, stating that the purchase by the Canadian Government of the territorial rights of the Hudson's Bay Company is a subject which it is undesirable to decide, pending the discussion of the Union of the North American Provinces.

I transmit to you, for your information, and with reference to that despatch, a copy of a further letter† which I have received from the Company, reporting acts of violence and plunder, on the part of the Indians, on the Saskatchewan and Red River.

I have, etc.,

CARNARVON.

Governor the Right Hon. Viscount Monck,
etc., etc., etc.

THE BRITISH NORTH AMERICA ACT, 1867.‡

(Extracts.)

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick, have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom:

---

* Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

† [Omitted as not affecting the present question.—G. E. L.]

‡ Imperial Act 30-31 Vict. c. 3. Assented to March 29th, 1867.

And whereas such a Union would conduce to the welfare of the Provinces and promote the interests of the British Empire:

And whereas on the establishment of the Union by authority of Parliament it is expedient, not only that the Constitution of the legislative authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared:

And whereas it is expedient that provision be made for the eventual admission into the Union of other parts of British North America:

Be it therefore enacted and declared, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "The British North America Act, 1867."

2. The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick, shall form and be one Dominion under the name of Canada; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.

4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's Proclamation; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.

5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.

6. The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the purposes of the election of members to serve in the House of Commons, be divided into Electoral Districts as follows:—

1.—*Ontario.*

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the first Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one member.

70. The Legislative Assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two Electoral Districts set forth in the first Schedule to this Act.

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions, in each case, as are in the Addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

THE FIRST SCHEDULE.

Electoral Districts of Ontario.

[Here are set out the eighty-two Electoral Districts of the Province, under their respective numbers, from 1 to 82. The forty-fourth Electoral District is described therein as follows :—]

"44. The Provisional Judicial District of ALGOMA."*

MEMORANDUM OF THE COMMISSIONER OF CROWN LANDS OF CANADA, 14TH JUNE, 1867. †

The Commissioner of Crown Lands has the honour to submit to your Excellency in Council, that in the year 1859, the section of country between Lake Superior and Dog Lake was thoroughly explored by Provincial Land Surveyors Lindsay Russell and J. F. Gaudet, under the command of Mr. Simon Dawson, Civil Engineer, and a fair line of road marked out (shewn on the accompanying tracing), from Thunder Bay to Dog Lake, a distance of twenty-five miles.

2. It is reported to the Commissioner of Crown Lands that this line was well marked out, and having been for some time used as a mail route, will not be difficult to trace, the bridging will be inconsiderable, and a good waggon road may be constructed for about fourteen hundred dollars a mile.

3. The outlet of Dog Lake presents facilities for raising the waters thereof from seventeen to twenty feet, by means of dams across the two channels into which the outlet is divided—which increased elevation the banks of the Lake will, it is reported to the Commissioner, admit of. It is estimated that the necessary dams could be constructed for $6,000. The effect of the work would be to render Dog River navigable for craft drawing six feet of water as far as Jourdain's Rapid, about 37 miles by the windings of the river, or 20 in a direct line from Dog Lake.

4. From Jourdain's Rapid, on Dog River, to the Depot, on Savanne River, is in a direct line eight miles and three-quarters, and forms the height of land dividing the waters which run to Lake Superior from those flowing to Lake Winnipeg. A good waggon road could be constructed for $900 a mile ; but as it would have to pass about two miles beyond the Depot, the distance must be reckoned at eleven miles.

5. The drift flood-wood in the Savanne River would require to be cleared out, at a probable cost of $1,000.

6. The total cost to reach the waters of the Savanne River would be, therefore, as follows :—

Thunder Bay to Dog Lake, 25 miles, at $1,400 a mile	$35,000 00
Dams at the outlet of Dog Lake	6,000 00
Jourdain's Rapid to Depot on Savanne River, 11 miles of road, at $900 a mile	9,900 00
Savanne River, clearing out flood-wood in	1,000 00
	$51,900 00
Superintendence and Contingencies	4,000 00
	$55,900 00

* [The Proclamation of the Governor-General of 27th August, 1859, (see *Canada Gazette* of 1859, p. 2154), creating the Provisional Judicial District of Algoma, described its boundaries as follows :—Commencing on the north shore of the Georgian Bay of Lake Huron, at the most westerly mouth of French River ; thence due north to the northerly limit of the Province ; thence along the said northerly limit of the Province, westerly to the westerly limit thereof ; thence along the said westerly limit of the Province, southerly to the southerly limit thereof ; thence along the said southerly limit of the Province to a point in Lake Huron, opposite to the southern extremity of the Great Manitoulin Island ; thence easterly and north-easterly, so as to include all the islands in Lake Huron not within the settled limits of any county or district, to the place of beginning.—G. E. L.]

† Sess. Papers, Can., 1867-8, Vol. 1, No. 19. This was before Confederation.

7. The above is the approximate estimate of Mr. Simon Dawson, C.E., who was in command of the Red River Exploring Expedition in 1858-9, and who now reports to the Commissioner of Crown Lands that he believes the necessary works, of suitable character and strength, can be constructed for the sums named; and that the materials, as well stone as wood, required therefor, can be readily procured in the neighbourhood of the works, with hardly any transportation that cannot be done in scows constructed on the spot.

8. The result of the improvements above estimated for, would be that 120 miles of the route from Lake Superior to Red River would be thrown open, giving easy access to Lac des Mille Lacs, the western extremity of which is within 70 miles of Rainy Lake, from whence the navigation is uninterrupted (save by a short portage at Fort Francis) to the north-west angle of the Lake of the Woods, a point distant about 90 miles from Fort Garry.

9. The Colonization Road Fund of Upper Canada has a sum at its credit, from Parliamentary votes, sufficient to meet the expenditure contemplated by this Memorandum, in case your Excellency in Council should deem it expedient for the present to devote it to this object, on the assumption that the amount now expended will form a claim upon the new Dominion of Canada, and that proper accounting shall be had between the present Provinces of Upper and Lower Canada, as to the sum now taken from the Colonization funds of Upper Canada, for general purposes, the equivalent votes for Lower Canada having been heretofore therein expended.

10. The Commissioner of Crown Lands humbly recommends to your Excellency that the course above suggested be adopted, and that the improvements described be immediately undertaken, and carried out during the present season.

A. Campbell, C.C.L.

Crown Lands Department,
14th June, 1867.

Report of a Committee of Council, approved by His Excellency the Administrator of the Government, on the 18th June, 1867.*

The Committee have had under consideration the annexed Memorandum of the Honourable the Commissioner of Crown Lands [being that of 14th June, 1867], on the subject of constructing a line of road from Thunder Bay to Dog Lake, and thence to Savanne River, for which an approximate estimate has been submitted by Mr. Simon Dawson, C.E., who had charge of the Exploring party despatched to Red River in 1858-9; and they respectfully report their concurrence in the recommendation made by the Commissioner in his said annexed Memorandum, and submit the same for your Excellency's approval.

Certified.

W. H. Lee, C.E.C.

[The public works undertaken by the Province of Canada, referred to in the two preceding documents, were partly to the east and partly to the west of the height of land which divides the waters that fall into Lake Superior from those that fall, through Lake Winnipeg, into Hudson's Bay. They formed part of a scheme of land and water communication designed to extend from the western shore of Lake Superior to the Red River. See extract from Mr. Bridgland's report of 4th October, 1867, inserted here out of its ordinary course.—G. E. L.]

*Sess. Papers, Can., 1867-8, Vol. 1, No. 19. This was before Confederation.

REPORT OF THE SUPERINTENDENT OF COLONIZATION ROADS (ONTARIO) TO THE ONTARIO COMMISSIONER OF CROWN LANDS.*

(Extract.)

DEPARTMENT OF CROWN LANDS,
PROVINCE OF ONTARIO,
TORONTO, 4th October, 1867.

To the Hon. S. Richards, Commissioner of Crown Lands.

SIR,—I have the honour to report to you my return from Thunder Bay, on Lake Superior, whither I had been directed to proceed by the former Commissioner of Crown Lands, the Hon. Alex. Campbell.

My instructions from the above named Minister directed me to organize and supply a party of labourers, with overseers and assistants, for the purpose of commencing and forwarding a scheme of works, intended to open a regular transit line of communication between Thunder Bay, on Lake Superior, and Fort Garry, on the Red River, estimates and appropriations having been made for the above work, as far as the Savanne River, amounting to $55,900.

My instructions further directed me to operate in concert with Mr. S. J. Dawson, who was charged specially with the construction of the dams necessary to raise the waters of Dog Lake and River, in order to complete the first navigable reach upon the said waters.

[Here follows details of the work, and information respecting the soil, etc.]

All of which is respectfully submitted by

Your obedient servant,

JAS. W. BRIDGLAND, †
Supt. of Col. Roads.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.‡

DOWNING STREET,
23rd August, 1867.

MY LORD,—I have the honour to transmit to you a copy of a letter, with its enclosure, from the Hudson's Bay Company, together with a copy of the reply which I have caused to be returned to it. §

The question of the Hudson's Bay Territory is rapidly becoming urgent, and if delayed much longer may give rise to serious difficulty.

No time should, therefore, be lost in deciding on the course of action to be pursued by Canada.

I have, etc.,

BUCKINGHAM & CHANDOS.

Governor the Right Honourable Viscount Monck.

---

*Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

†[Mr. Bridgland also addressed reports in October and in December of 1867 to the Dominion Commissioner of Public Works.—G. E. L.]

‡Sess. Papers, Can., 1867-8, Vol. 1, No. 19.

§[These enclosures are omitted as not affecting the present question.—G. E. L.]

Resolution of the Dominion House of Commons for an Address to the Governor-General, 9th December, 1867.*

Resolved, That an humble address be presented to His Excellency the Governor-General, praying His Excellency to cause to be laid before this House, copies of the two several maps furnished to the Government of the late Province of Canada by the Hudson's Bay Company, in the year 1864, and showing, respectively, the territory then claimed by that Company, and the portion of land claimed by them which the Company proposed to surrender to the Crown.†

Resolutions, numbered 1 to 8, of the Parliament of Canada, December, 1867.‡

[The first seven Resolutions correspond exactly with the seven paragraphs of the address which was founded upon them, being the next following document.—G. E. L.]

8. *Resolved*, That in case any negotiation between the Canadian Government and the Hudson's Bay Company for the termination of the rights of the latter, entered into in accordance with the despatch of the 17th June, 1865, from the then Secretary of State for the Colonies to His Excellency the Governor-General, should result in an agreement between them, it is hereby declared that such agreement must be submitted to, and sanctioned by the Parliament of Canada before the same shall have any force or effect whatever.

Address to Her Majesty from the Senate and House of Commons of Canada, December, 1867. ‡

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada, in Parliament assembled, humbly approach Your Majesty for the purpose of representing:—

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire, if the Dominion of Canada, constituted under the provisions of the British North America Act of 1867, were extended westward to the shores of the Pacific Ocean.

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River Districts,—the development of the mineral wealth which abounds in the regions of the North-West,—and the extension of commercial intercourse, through the British Possessions in America, from the Atlantic to the Pacific,—are alike dependent upon the establishment of a stable government, for the maintenance of law and order in the North-Western Territories.

That the welfare of a sparse and widely-scattered population of British subjects, of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of this Dominion.

That the 146th section of the British North America Act of 1867 provides for the admission of Rupert's Land and the North-Western Territory, or either of them, into

---

* Journals, House of Coms., Can., 1867-8, p. 57.

† [These are the maps referred to in the Report of the Hon. George Brown of 26th January, 1865, as being annexed thereto. See *ante*, p. 109.—G. E. L.]

‡ Journals, House of Commons, Can., 1867-8, pp. 66, 67; Prefix to Dom. Stats., 1872.

Union with Canada, upon terms and conditions to be expressed on Address from the Houses of Parliament of this Dominion to Your Majesty, and which shall be approved of by Your Majesty in Council.

That we do therefore most humbly pray that Your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government; and we most humbly beg to express to Your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of Your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same, shall be respected and placed under the protection of Courts of competent jurisdiction.

And furthermore, that upon the transference of the territories in question to the Canadian Government, the claims of the Indian Tribes to compensation for lands required for purposes of settlement, will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

All which we humbly pray Your Majesty to take into Your Majesty's most gracious and favourable consideration.

The Senate, Tuesday, December 17th, 1867.

JOSEPH CAUCHON, *Speaker.*

House of Commons, Monday, December 16th, 1867.

JAMES COCKBURN, *Speaker.*

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,
OTTAWA, 21st Dec., 1867.

MY LORD DUKE,—I have the honour to transmit a joint Address to Her Majesty the Queen, from the Senate and House of Commons of the Dominion of Canada, praying that Her Majesty will be graciously pleased to direct that an Order in Council may be passed in conformity with the provision of the 146th Section of the British North America Act, 1867, for annexing to the Dominion of Canada the territory of Prince Rupert's Land and the Red River Settlement.

I have the honour to request that your Grace will lay this Address at the foot of the Throne.

I have, etc.,

MONCK.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 28TH DECEMBER, 1867.*

The Committee have had under consideration the annexed Memorandum from the Honourable the Minister of Public Works, submitting, for the approval of your Excellency in Council, certain recommendations on the subject of the negotiation with the Imperial

* Sess. Papers, Can., 1867-8, Vol. 1, No. 59.

Government for the transfer of Rupert's Land and the North-West Territory to Canada, and they respectfully advise that a copy of the same, when approved by your Excellency, be forwarded to his Grace the Secretary of State for the Colonies, as embodying the views of the Canadian Government on that important question.

Certified.

W. H. Lee,
Clerk, P. C.

Report of the Dominion Minister of Public Works.*

The undersigned has the honour to submit, for the consideration of your Excellency in Council, the following recommendations on the subject of the negotiation with the Imperial Government for the transfer of Rupert's Land and the North-West Territory to Canada.

I. That in addition to the joint Address of both Houses on the subject, your Excellency will be pleased to transmit to the Secretary of State for the Colonies, the Resolutions as they were finally adopted by the House of Commons and the Senate, with the votes and proceedings of both Houses thereon.

II. That the attention of his Grace the Duke of Buckingham be specially called to the Eighth Resolution, which was not embodied in the Address, and was not intended by the Canadian Parliament to express a term or condition of the Order in Council, authorized by the 146th Section of the British North America Act.

III. That your Excellency will be pleased to express to his Grace, as the opinion of the Canadian Government, that it is highly expedient that the transfer, whic h theImperial Parliament has authorized and the Canadian Parliament approved, should not be delayed by negotiations or correspondence with private or third parties, whose position, opinions and claims have heretofore embarrassed both Governments in dealing with this question.

IV. That in the opinion of the Canadian Government, the terms of the Address cannot be materially altered or extended without causing injurious delay, and greatly embarrassing the people and Government of Canada in their efforts to open communications with the Territory, to encourage emigration and settlement, to establish law and order, and to provide for the speedy organization of Municipal and Local Governments therein.

V. That recent proposals in the Congress of the United States in reference to British America, the rapid advance of mining and agricultural settlements westward, and the avowed policy of the Washington Government to acquire territory from other powers by purchase or otherwise, admonish us that not a day is to be lost in determining and publishing to the world our policy in regard to these Territories.

VI. That your Excellency will be pleased to request his Grace to inform your Excellency by Atlantic Cable (if the information can be so communicated), whether the Imperial Cabinet will at once advise Her Majesty to approve of the transfer on the terms of the Address, in order that the Canadian Government may be prepared to submit appropriate measures on the subject on the re-assembling of Parliament in March next.

Respectfully submitted,

Wm. McDougall.

December 28th, 1867.

The Governor-General to the Colonial Secretary.*

Government House,
Ottawa, Canada, January 1, 1868.

My Lord Duke,—Referring to my despatch No. 107, of 21st December, 1867, I have the honour to transmit to your Grace an approved Minute of the Privy Council of

*Sess. Papers, Can., 1867-8, Vol. 1, No. 59.

Canada, together with the Resolutions of both Houses, and the proceedings upon them respecting the proposed annexation of Prince Rupert's Land and the North-West Territory to the Dominion of Canada.

I desire especially to call your Grace's attention to the eighth resolution adopted by both Houses, and which was not incorporated in the Address to Her Majesty.

If Her Majesty's Government should approve of the proposed incorporation with Canada of this Territory, on the terms contained in the Address to the Queen and these Resolutions, it would be of great advantage to my Government if I could be informed of the decision by telegraph, in order that all necessary steps may be taken for carrying the arrangement into effect.

I have, etc.,

MONCK.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR GENERAL.*

DOWNING STREET,
18th January, 1868.

MY LORD,—I have received your despatch, No. 107, of the 21st December, accompanied by an Address to Her Majesty from both Houses of the Canadian Parliament, proposing the annexation of Prince Rupert's Land and the North-West Territory to the Dominion of Canada. I have also received your Lordship's subsequent despatch, No. 1, of the 1st January, enclosing Resolutions adopted by the two Houses on the same subject, and an approved Minute of the Privy Council.

These proceedings will receive the early and serious attention of Her Majesty's confidential advisers.

The decision of Her Majesty's Government will be communicated to you as early as possible; but the consideration by them of so important a subject will necessarily occupy some short time.

I have, etc.,

BUCKINGHAM & CHANDOS.

Governor the Right Honourable Viscount Monck,
etc., etc., etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.†

HUDSON'S BAY HOUSE, LONDON,
15th January, 1868.

MY LORD DUKE,—In addressing this letter to your Grace on behalf of the Committee of the Hudson's Bay Company, I think that some apology is necessary for anticipating the official communication from the Colonial Office, of the Resolutions passed in the Parliament of Canada, as well as the Address to be founded upon them; but as from the tone of the debate in the Canadian Parliament, and from the terms of the Resolutions passed there, it is manifestly the object of that Parliament to have the power to establish in the Dominion of Canada, including the Territory of Rupert's Land, Courts which shall have jurisdiction in all matters arising in any part of British North America, and thus to give power to the tribunals so constituted to determine upon the rights claimed by this Company under their Charter, a course of proceeding which this

* Sess. Papers, Can., 1867-8, Vol. 1, No. 59.

† Journals, Coms., Can., 1867-8, p. 368.

Committee consider to be so injurious to the interests of the Hudson's Bay Company, they are desirous to bring the matter before your Grace, and to submit their views upon the subject to Her Majesty's Government, before any assent is given or determination come to in reference to Her Majesty's approval of the proposed admission of Rupert's Land into the Union of British North America.

I beg to remind your Grace that the rights of this Company, under their Charter, have at various times been brought under the consideration of the Government, and that the result of those discussions has been a clear and distinct recognition on the part of the Crown that the general validity of the Charter cannot now be called in question, and, in particular, that the territorial ownership of the lands granted by the Charter and the *rights* necessarily incidental thereto, must now be considered as valid.

It is true that questions have from time to time been raised in Canada as to the extent of the territory claimed by this Company under their Charter, and in some respects as to other rights which the Charter confers; but while Her Majesty's Government have at all times declined to be any party to proceedings on the subject, the opportunity has always been afforded to the authorities of Canada to bring any questions for adjudication before Her Majesty in Council—a course to which this Compny have always been prepared to accede, and which appears to be the only legitimate mode of deciding their rights, if they are to be called in question.

The Canadians have altogether abstained from availing themselves of the opportunity thus afforded them; but it is now obviously the object of the Canadian Legislature to secure to tribunals of their own nomination the decision of those rights.

I may here state that, so far as the mere political powers granted by the Charter are concerned, such as the rights of government, taxation, and exclusive administration of justice, the Company have long since expressed their willingness that these powers should be vested in officers deriving their authority directly from the Crown; but before any such powers can with justice be transferred to the Colonial Government, I submit that the extent of the territorial rights of the Company should either be fully recognized, or that if the Canadian Government are desirous of procuring those rights for the benefit of Canada in general, they should in the first instance arrange with the Hudson's Bay Company the terms upon which they should be so acquired.

But should the Canadian Legislature still desire that any judicial investigation into the territorial rights of the Company should take place, such inquiry should be referred to the Judicial Committee of the Privy Council, in accordance with the opinion of the Law Officers of the Crown, given so long ago as July, 1857, as the only tribunal to which ought to be delegated the construction of a Charter emanating from the Sovereign of Great Britain. This opinion your Grace will find at page 404 of the Report from the Select Committee on the Hudson's Bay Company, ordered by the House of Commons to be printed, the 31st July and 11th August, 1857.

I have, etc.,

EDMUND HEAD,
Governor.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
18th January, 1868.

SIR,—I am directed by the Duke of Buckingham and Chandos to acknowledge the receipt of your letter of the 15th instant, relative to the proceedings of the Canadian

* Journals, Coms., Can., 1867-8, Vol. 1, p. 369.

Parliament on the subject of the Hudson's Bay Company. I am desired to state that the subject of this letter will not fail to receive the careful consideration of Her Majesty's Government.

I am, Sir,
Your obedient servant,

T. F. Elliot.

The Right Honourable
Sir E. Head, Bart., K.C.B.

The Under-Secretary to the Governor of the Hudson's Bay Company.*

Downing Street,
18th January, 1868.

Sir,—I am directed by the Duke of Buckingham and Chandos, to transmit to you, for the information of the Committee of the Hudson's Bay Company, a copy of a despatch which has been received from the Governor-General of Canada, accompanied by a copy of the Address to Her Majesty from the Senate and Commons of Canada, praying that steps may be taken for uniting Rupert's Land and the North-West Territory with the Dominion of Canada.

I have, etc.,

T. F. Elliot.

The Right Honourable
Sir E. Head, Bart., K.C.B.

The Governor of the Hudson's Bay Company to the Colonial Secretary.*

Hudson's Bay House, London,
25th January, 1868.

My Lord Duke,—I have the honour to acknowledge Mr. Elliot's letter, of the 18th instant, enclosing a copy of Address to the Queen, forwarded by the Governor-General of Canada, and to thank your Grace for communicating these papers to the Hudson's Bay Company.

On this Address I beg to request your Grace's attention to the following observations on behalf of myself as Governor, and the Committee of the Company:—

1. It seems necessary in the first place to distinguish the two classes of rights conferred on the Company by the Charter. Some of these are, no doubt, of a public or political character, such as belong to a proprietary government; but others are practically of a private nature, such as might have been vested in any individual subject, or any private corporation clothed with no public functions of any kind. Of these latter, it is only necessary at present to refer to the right of private property in the soil and in the mines and minerals.

Report of 1857, Appendix, p. 404, para. 2.

2. It may be that the public or political rights of the Company, are in the Charter ill-defined and of doubtful expediency at any time. It may be, too, as the Law Officers in their letter of 1857 appear to hint, that for any effectual exercise they require the aid of the right of private property, as vested in the Company by the same instrument.

3. The Committee need scarcely remind your Grace that, so far from opposing a

---

* Journals, Coms., Can., 1867-8, Vol. 1, p. 370.

resumption by the Crown of the political powers of the Company, almost the first important step taken by them in 1863, was the adoption of the following resolution:—

Sir E. Head to Sir F. Rogers, 28th Aug., 1863.

"Resolved that the time has come when, in the opinion of this Committee it is expedient that the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown, and exercising it in the name of Her Majesty.

"That the Governor be empowered to communicate this resolution to his Grace the Duke of Newcastle and to discuss the subject with him, or with the Under Secretary of State for the Colonies, reporting from time to time to this Committee thereon."

Mr. C. Fortescue, to Sir E. Head, 11th March, 1864.

4. In the correspondence which ensued with the Colonial Office, it appears to be implied on the part of his Grace the Duke of Newcastle, that the fact of the right of private property in the soil being no longer possessed by the Crown, was one of the chief obstacles to a compliance with the suggestion made in the above resolution. If this be so, the very fact of making this objection involves an admission in favour of the Company. Most assuredly if the Crown had alienated its right of property in the soil and minerals of the Hudson's Bay Territory, it had granted it to no other party than the Hudson's Bay Company, and by no instrument other than the Charter of Charles II.

5. On Mr. Fortescue's letter of March 11, 1864, an offer of a contingent money payment, as the consideration for the cession of the territorial rights of the Company, was distinctly made by the Secretary of State. The proviso inserted in the postcript to that letter will be adverted to afterwards, and had reference only to the supposed rights of Canada.

See Post, para. 9.

6. It is unnecessary for the Committee to refer to the undisputed enjoyment of these rights, at any rate since the time of the Treaty of Utrecht.

Letter of the Law Officers to Mr. Merivale, Appendix to Report, 1857, page 404, last paragraph.

7. In addition to all this, it remains to quote the express words of the Law Officers in their letter of 1857, already referred to. They say, "In our opinion the Crown could not now, with justice, raise the question of the general validity of the Charter; but that on every legal principle the Company's territorial ownership of the lands granted, and the rights necessarily incidental thereto, ought to be deemed to be valid."

Moreover, in a passage alluded to above, the Law Officers imply indirectly their belief in the validity of this right of private property, when they say that "rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, could not legally be insisted on by the Company." What other opinions of the Law Officers of the Crown may be found in the records of the Colonial Office it is not for us to say, but the evidence given by the Right Honourable Edward Ellice before the Committee of 1857, as to the opinions taken by him both for and against the Company, is well worth referring to.

Answers to questions, 5, 8, 2, 3.

8. One other point is a mere technicality no doubt, but it may be worth observing that the title of the Company to their land is an English title, since it is granted "to be holden as of the Manor of East Greenwich, in our County of Kent, in free and common soccage."

9. The Committee do not intend to impute to the Parliament or the Ministry of Canada, any deliberate intention of violating such rights of the Hudson's Bay Company as they admit to exist, but it must be remembered that a theory has been started, and is referred to in the debate on this Address by which the admissions of the English Government and the opinion of the English Law Officers as to the right of ownership in the soil are directly negatived. It has been supposed, we believe, that France was in possession of these territories, or a large portion of them when the Charter was granted; that they were therefore within the exception which that Charter contains with regard to other territories belonging to "any other Christian Prince;" and that this French title remained good and was transferred to the English Crown with Canada at the final cession of that Province by France.

See postcript to letter of Mr. C. Fortescue to Sir E. Head, 11th March, 1864, and letter April 5, 1864.

10. This is not the place for entering on a discussion of the facts and law involved in this argument,—an argument, as we have said, inconsistent with the continued recognition of the Company's rights in various ways by the English Government and their legal advisers for a long series of years; but if this objection to the Company's title shall be presented in a tangible form before a proper tribunal, the Hudson's Bay Company will be quite ready to meet it and demonstrate its futility.*

11. The very existence, however, of such a theory in the minds of the Canadian Ministers or the Canadian people, is a sufficient reason why, in justice to the Company, it should be set aside, or its truth or falsehood should be conclusively tested before their rights of property under the Great Seal of England, and in fact their future existence, is placed under the legislation and the absolute control of Canada.

Despatch of Mr. Cardwell to Lord Monck, June 17, 1865.
Letter of Mr. Forster to Sir E. Head, 20th Feb., 1866.
Minute, 22nd June, 1866.
Letter from Sir F. Rogers, to Sir E. Head, 31st July, 1866.
Mr. Elliot to Sir E. Head, April 15, 1867.

12. The Committee cannot but feel that the Company has already had great reason to complain of the course pursued during the last few years. In 1865 the Canadian Delegates sent to this country to promote the scheme of Confederation solemnly "undertook," with Mr. Cardwell, to negotiate with the Hudson's Bay Company. The answer given by the Committee was that they would be ready to consider any proposal. The fact of this undertaking was recited again in a subsequent letter, as a reason why no other step should be taken. No negotiation, however, was opened, and, in 1866, the Canadian Council resolved that such negotiation must devolve on the Government of the Confederation when constituted, rather than on the Government of Canada. This was confirmed by the resolutions of the Delegates in England, of April 3rd, 1867. After all, when the Confederation is formed, and the Parliament has met, resolutions are passed, and an Address to the Queen is adopted, praying that the powers of legislation and government over the Hudson's Bay Territory and the North-Western Territory may be conveyed to Canada first, and that the judicial decisions or negotiations as to the Company's rights should take place afterwards.

13. We desire in the first place to remark that this inversion of the order of proceeding is entirely contrary to the expectation raised by the acts of the delegates, and by the communications from the Colonial Office to us. We may have erred in thinking so, but certainly we conceived that the negotiations which the delegates, in 1865, undertook to initiate were intended, under the Act of last session, to form the preliminary step for transferring the supreme control to Canada, not to follow after such transfer with all the disadvantages to the Company which must then ensue from the change of the relative position of the parties. It would appear, too, from a passage in a speech of the Honourable Mr. Holton in the Canadian Parliament, as reported in the *Canadian News*, as per extract herewith, that the Committee were not the only parties who supposed this to be the intention of the Government.

Extract No. 1 enclosed.

The Committee, moreover, thought that it was expressly in anticipation of this original undertaking to negotiate being thus carried out, that the Secretary of State for the Colonies intimated his wish in the following terms that the Company should abstain from any other arrngements likely to interfere with the views then entertained:

"It is of course for the Hudson's Bay Company to consider for themselves what course is most proper and conducive to their own interests. But it appears to Lord Carnarvon that any effective negotiation being for the moment impossible, it is for the interest of both parties that the question should remain open for arrangement so soon as an authority exists capable of dealing with it on the part of the Colony or Colonies interested. He would therefore regret to learn that the Company contemplates any immediate action which was calculated to embarrass the negotiations, which would then become possible, and which in the opinion of the Executive Council it would be the duty of the Confederate Government to open."

Mr. Elliot to Sir E. Head, January 23, 1867.

* [See extracts from Jefferys, pp. 21 and 22, *ante*.—G. E. L.]

14. The Committee felt no anxiety respecting the wide powers of transfer conferred on the Crown by the Act of last session, because they did not believe that their rights of ownership in the soil and minerals could be affected by it; and because, after the undertaking to negotiate formally communicated to them, and the correspondence relating to it, they relied, as they continue to rely, on the honour and good faith of the English Government.

30 and 31 Vic., c. 3, sec. 146.

15. But the case assumes a very different aspect if the plan of giving to the Canadian Parliament and Government legislative and administrative control over these territories, without defining and providing for the rights and interests of the Company *as a condition precedent* should be carried out. So far as we now see, no security of any kind would exist against such a use of this control in taxation and other matters as might be thought best fitted for compelling the Company to accept any terms, however disadvantageous. No specific guarantee it seems is proposed to be given as to the legislation which might take place before these claims were finally disposed of, or as to the impartiality and competency of the Courts before which the Company, if aggrieved, would have to seek redress. At any rate, the relative position of the two parties to any such suit or discussion respecting these rights would, *after* the transfer of the legislative and administrative control, be one which must leave the Company as defendant, more or less at the mercy of the plaintiff, and would, to say the least, taint the voluntary character of any agreement to be subsequently arrived at. The only reliance of the Company would be on the honesty and the considerate disinterestedness of the Canadian Parliament and people.

The Committee, moreover, venture to think that their apprehensions on this score are reasonably increased, rather than diminished by all that is reported to have passed in the debates, and especially by the extract of the accompanying report of the speech of Sir John A. Macdonald, K.C.B., the Canadian Premier. The Report is taken from the *Canadian News*. It is probably condensed, and, as a matter of course, it may be more or less inaccurate.

Extract from the *Canadian News*, inclosed 2.

16. The Act of last Session provides that the incorporation of Rupert's Land and the North-Western Territory with Canada may be made by the Queen "on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf, shall have effect as if they had been enacted by Parliament of the United Kingdom of Great Britain and Ireland."

30 and 31 Vic., cap. 3, s. 146.

Now looking to the previous correspondence between the Hudson's Bay Company and the Colonial Office, it is not unreasonable to suppose, that so far as regards the Territory of the Company, the Act contemplated the insertion of certain terms and conditions in any Address relating to the transfer of such Territory.

But the Address, a copy of which your Grace had had the goodness to transmit to us, contains no "terms and conditions" whatever, except a vague assurance that the "Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected and placed under the protection of courts of competent jurisdiction."

Such an assurance is of little value, when the party making it disputes the very existence of the rights in question, and at any rate it amounts to no more than a statement that British subjects on British soil shall be entitled to the protection of a Court of Law of some kind, hereafter to be established by the act of one of the parties.

It might be presumed that redress before a competent tribunal would be the right of any one who was wronged, and such an assurance can hardly be deemed a "term or condition" of the kind which the Statute intended to be set out specifically in the Address from the Legislature.

17. The Committee trust it may not for one moment be supposed that they arrogate to themselves any right or entertain the smallest desire to impede or even to comment on the general policy of transferring the government of the North-Western Territory and of the Hudson's Bay Territory to the Confederate Government of Canada. In this, as in everything else, they would bow with submission to the authority of the Crown, and

rejoice in any measure which was really calculated to strengthen loyalty and promote union in British North America.

18. What is asked for as a matter of justice to a proprietary consisting of upwards of 1,700 shareholders, who have paid a very large sum on the faith of our Charter, and of the protection of their rights of property in the soil by English law, is the adoption by Her Majesty's Government of one of the following alternatives :—

1st. That some conclusive agreement as to the extent, value and compensation to be made for the claims of the Company, as owners of the soil and minerals of the Hudson's Bay Territory, and some arrangement, by which burthens assumed by them in their political capacity, such as the endowment of the bishoprics, may, when that capacity ceases, be transferred to others, should be completed before, not after the transfer of the government of the North-Western Territory or Hudson's Bay Territory to Canada.

2nd. That before any incorporation of Rupert's Land or the North-Western Territory with Canada, the rights of private property vested in the Company, and the exact limits of such rights, should be ascertained, acknowledged and efficiently protected by law, in a manner binding on any Colonial Government, so that they should not be at any time hereafter impeached or violated without proper compensation.

I have, etc.,

EDMUND HEAD,
Governor.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

EXTRACT FROM A SPEECH OF THE HONOURABLE MR. HOLTON, IN THE CANADIAN PARLIAMENT, AS REPORTED IN THE "CANADIAN NEWS," OF JANUARY 2ND, 1868, PAGE 7, REFERRED TO IN THE PRECEDING LETTER OF SIR EDMUND HEAD.*

It struck him too that what was in contemplation in the Union Act, was that the Address to Her Majesty should follow the negotiations, and that the Address should set forth clearly and distinctly the terms on which we were prepared to unite that territory with Canada.

EXTRACT FROM A SPEECH OF SIR JOHN A. MACDONALD, K.C.B., IN THE CANADIAN PARLIAMENT, REPORTED AS ABOVE, PAGE 9, REFERRED TO IN THE PRECEDING LETTER OF SIR EDMUND HEAD.*

It had been said by the member for West Durham, that this was a worse proposition than the proposition of 1865.

It was precisely the same ; it was simply that we wished to take possession of this territory, and would undertake to legislate for it, and to govern it, leaving the Hudson's Bay Company no right except the right of asserting their title in the best way they could in Courts of competent jurisdiction. And what would their title be worth the moment it was known that the country belonged to Canada, and that the Canadian Government and Canadian Courts had jurisdiction there, and that the chief protection of the Hudson's Bay Company and the value of their property, namely, their exclusive right of trading in those regions, were gone forever. The Company would only be too glad that the country should be handed over to Canada, and would be ready to enter into any reasonable arrangement.

The value of the Company's interest would be determined by the value of their stock ; and what would that be worth when the whole country belonged to Canada ?

---

* Journals, Coms., Can., 1867-8, Vol. 1, p. 374.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
23rd April, 1868.

MY LORD,—I have already acknowledged, on the 18th of January, your Lordship's despatch, No. 107, of the 21st of December, transmitting a Joint Address from the Senate and House of Commons of Canada to Her Majesty, praying the annexation to Canada of Rupert's Land and the North-West Territory. Your Lordship will have the goodness to inform the Senate and House of Commons that their Address has been duly laid before the Queen.

Her Majesty's Government will be willing to recommend a compliance with the prayer of the Address so soon as they shall be empowered to do so with a just regard to the rights and interests of Her Majesty's subjects interested in those territories. They are advised, however, that the requisite powers of government and legislation cannot, consistently with the existing Charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament. Before such an Act can be obtained it is necessary to consider the position of the Hudson's Bay Company.

The Company have held their Charter, and exercised privileges conferred by it, for 200 years, including rights of government and legislation, together with the property of all the lands and precious metals; and various eminent Law Officers consulted in succession have all declared that the validity of this Charter cannot justly be disputed by the Crown.

I have, on behalf of Her Majesty's Government, called upon the Company to state the terms on which they would be prepared to surrender to the Crown whatever rights they have over the lands and precious metals, including the rights of government, with the intimation that no present payment in money will be made to them, but that in the transference of their rights to Canada they might have a reservation made to them of defined portions of land, and of a share of the future proceeds of the lands and precious metals of the territory up to a certain fixed amount.

I enclose copies of the letters which have passed up to the present time between the Company and this Department upon the subject.

H. B. Co., 15th Jan., 1868.
C. O., 18th Jan., 1868.
C. O., 18th Jan., 1868.
H. B. Co., 25th Jan., 1868.
C. O., 23rd April, 1868.

I purpose to introduce a Bill into the Imperial Parliament with the view of authorizing any arrangement which may be effected on the basis thus indicated; of defining the territory over which it extends; and authorizing the subsequent transfer to the Canadian Government of the rights and powers to be acquired by the Crown in respect to government and property, in accordance with the prayer of the Address.

With respect to the North-West Territory, the same obstacles do not exist to the transfer of the greater part by the Crown to Canada at the present time, subject to proper reservations of the rights and property of Her Majesty's subjects now settled therein, and for the protection of Her Majesty's native subjects; but I apprehend that while it remains separated from Canada by the Hudson's Bay Company's Territory, still under the Company's government, it will not be the desire of Canada to undertake the government of this more remote country. A portion of the North-West Territory, immediately adjacent to British Columbia, I am of opinion that it will be necessary for the public advantage to retain in the possession of the Crown, with a view to its incorporation with British Columbia.

I have the honour to be,
My Lord,
Your Lordship's most obedient, humble servant,

BUCKINGHAM & CHANDOS.

* Journals, Coms., Can., 1867-8, Vol. 1, p. 367.

THE UNDER-SECRETARY TO THE DEPUTY-GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
23rd April, 1868.

SIR,—I am directed by the Duke of Buckingham and Chandos to acquaint you that he has had under his consideration the Address from the Parliament of Canada to Her Majesty, praying that Rupert's Land and the North-West Territory may be united with the Dominion of Canada, and placed under the authority of the Canadian Parliament, and the letter from the Governor of the Hudson's Bay Company, dated the 25th of January, on that subject.

Her Majesty's Government think that it will be right to comply, under proper conditions, with the wish expressed by the Parliament of Canada, and they propose to introduce a Bill for the purpose into the Imperial Parliament.

They desire, however, to pay due regard to the interests of Her Majesty's subjects already concerned in the Territory; and with that view they will be prepared to make provision for any reasonable terms which may be agreed upon with the Hudson's Bay Company.

I am directed to call your attention to the negotiations which took place in 1864 between the Secretary of State and the Company, as recorded in the correspondence referred to in the margin, and I am to request that you will state what are the terms which the Company would be prepared to accept, proceeding on the principles then adopted—namely, that the compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company.

Colonial Office, 11th Mar., 1864.
5th April, 1864.
6th June, 1864.
Hudson's Bay Company, 13th April, 1864.
7th December, 1864.

I am, etc.,
C. B. ADDERLEY.

To Sir Curtis Lampson.

AN ACT FOR ENABLING HER MAJESTY TO ACCEPT A SURRENDER UPON TERMS OF THE LANDS, PRIVILEGES, AND RIGHTS OF "THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY," AND FOR ADMITTING THE SAME INTO THE DOMINION OF CANADA.†

Whereas by certain letters patent granted by His late Majesty King Charles the Second in the twenty-second year of His Reign certain Persons therein named were incorporated by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain lands and territories, rights of government, and other rights, privileges, liberties, franchises, powers, and authorities, were thereby granted or purported to be granted to the said Governor and Company in His Majesty's Dominions in North America:

And whereas by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the advice of Her Majesty's most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the union on such terms and conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the provisions of the said Act:

And whereas for the purpose of carrying into effect the provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid upon such terms as Her Majesty thinks fit to approve, it is expedient that the said lands, territories, rights, privileges, liberties, franchises, powers, and authorities,

* Journals, Coms., Can., 1867-8, Vol. 1, p. 374.

† 31-2 Vic., cap. 106. Assented to 31st July, 1868.

so far as the same have been lawfully granted to said Company, should be surrendered to Her Majesty, Her heirs and successors, upon such terms and conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "Rupert's Land Act, 1868."

2. For the purposes of this Act the term "Rupert's Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company.

3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under her sign manual and signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever granted or purported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada in pursuance of the one hundred and forty-sixth section of the British North America Act, 1867; and that the said surrender and acceptance thereof shall be null and void unless within a month from the date of such acceptance Her Majesty does, by Order in Council, under the provisions of the said last recited Act, admit Rupert's Land into the said Dominion; provided further, that no charge shall be imposed by such terms upon the Consolidated Fund of the United Kingdom.

4. Upon the acceptance by Her Majesty of such surrender, all rights of government and proprietary rights, and all other privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land, or elsewhere, trade and commerce.

5. It shall be competent to Her Majesty by any such Order or Orders in Council as aforesaid, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada from the date aforesaid to make, ordain, and establish within the land and territory so admitted as aforesaid all such laws, institutions, and ordinances, and to constitute such Courts and officers, as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein; Provided that, until otherwise enacted by the said Parliament of Canada, all the powers, authorities, and jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and justices now acting within the said limits, shall continue in full force and effect therein.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

8th August, 1868.

MY LORD,—I have the honour to transmit to you, for your Lordship's information, the enclosed copy of an Act of Parliament,† conferring powers for the surrender to Her Majesty by the Hudson's Bay Company of their territories and privileges.

---

* Sess. Papers, Can., 1869, No. 25.

† [The Rupert's Land Act, 1868.—G. E. L.]

In pursuance of the powers conferred by this Act, I propose to enter into negotiations with the Hudson's Bay Company as to the terms on which they will surrender their rights, and I shall not fail to keep your Lordship informed of the course of such negotiations.

I have, &c.,

BUCKINGHAM & CHANDOS.

Governor the Right Honourable Viscount Monck.

TELEGRAM—THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, 9th September, 1868.

Privy Council wish to send a delegation to London to take part in treaty with Hudson's Bay Company.

They are anxious that negotiations with Company should be postponed till arrival of delegates in London.

Please inform me by Cable how soon you will be able to receive them.

They are prepared to go immediately.

MONCK.

TELEGRAM—THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

COLONIAL OFFICE, 11th September, 1868.

Delegates to advise with me on the arrangements between the Crown and the Company should start at once. I have appointment with Governor of Company for 18th, but will now conclude nothing until delegation shall have arrived.

BUCKINGHAM & CHANDOS.

TELEGRAM—THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, 14th September, 1868.

I find now that for reasons connected with the public service, delegates do not wish to leave Canada till first week in November. Will this suit you?

MONCK.

TELEGRAM—THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

COLONIAL OFFICE, 17th September, 1868.

I should have preferred an earlier date—I cannot defer negotiations with Hudson's Bay Company, but probably the settlement of terms will occupy some time.

BUCKINGHAM & CHANDOS.

TELEGRAM—THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, 18th September, 1868.

In consequence of your last message, delegates will leave for England the 7th October

MONCK.

---

* Sess. Papers, Can., 1869, No. 25.

TELEGRAM—THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

COLONIAL OFFICE, 18th September, 1868.

I have seen Kimberley and Lampson to-day. I think it essential that some leading member of your Government, if possible all delegates, should be here not later than 9th October to confer with me. Delegates will be wanted at least 10 days.

BUCKINGHAM & CHANDOS.

TELEGRAM—THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, 22nd September, 1868.

Delegates intend to sail from hence October 3rd.

They trust nothing will be concluded until their arrival in England, where they will be due about the 13th.

MONCK.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 1ST OCTOBER, 1868.*

In view of the great importance of the immediate settlement of the Hudson's Bay question, and in consequence of the passage by the Imperial Parliament of the Act 31 and 32 Vic., cap. 105, and in accordance with the despatch of his Grace the Secretary of State, No. 173, and dated 8th August, 1868, the Committee of Council advise that a delegation proceed to England composed of the Hon. Sir G. E. Cartier and the Hon. W. McDougall, for the purpose of arranging terms for the acquisition by Canada of Rupert's Land, such terms to be subject to the approbation of the Governor in Council.

WM. H. LEE,
Clerk, P. C.

MEMORANDUM OF SIR GEORGE E. CARTIER AND THE HON. WILLIAM MCDOUGALL, CANADIAN DELEGATES TO ENGLAND.*

We have the honour to acknowledge communication of a Minute of Council of this day's date, appointing us a delegation to England to arrange with the Imperial Government the terms upon which Canada may acquire Rupert's Land, and to state that we have much pleasure in accepting the mission.

We would, however, beg to call the attention of the Committee to the terms of the recent Act of the Imperial Parliament to "enable Her Majesty to accept a surrender upon terms of the lands, privileges and rights" of the Hudson's Bay Company which declares that Rupert's Land for the purposes of that Act "shall include the whole of the lands and territories held or claimed to be held" by the Company.

We would also call the attention of the Committee to the terms of the British North America Act, which provides for the admission of Rupert's Land and the North-West Territory, or either of them, into the Union.

We respectfully recommend that we be authorized to arrange with the Imperial Government for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land as may be found practicable and expedient.

GEO. ET. CARTIER.
W. MCDOUGALL.

October 1st, 1868.

---

* Sess. Papers, Can., 1869, No. 25.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 1ST OCTOBER, 1868.*

The Committee have had under consideration a memorandum dated this day from the Hon. Sir George E. Cartier, Bart., and the Hon. Wm. McDougall stating that they have received communication of the Minute in Council appointing them a delegation to England to arrange with the Imperial Government the terms upon which Canada may acquire Rupert's Land, and expressing their readiness to accept that mission.

They however bring under the notice of the Government the terms of the recent Act of the Imperial Parliament, to enable Her Majesty "to accept a surrender upon terms, of the lands, privileges, and rights" of the Hudson's Bay Company, which declares that "Rupert's Land" for the purposes of that Act "shall include the whole of the lands and territories held or claimed to be held" by the Company.

They also call your Excellency's attention to the terms of the British North America Act, which provides for the admission of Rupert's Land and the North-West Territory, or either of them, into the Union, and they recommend that they be authorized to arrange with the Imperial Government for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land as may be found practicable and expedient.

The Committee advise that the authority requested by the delegates be granted, and that a copy of this Minute, if approved by your Excellency, be transmitted to his Grace the Secretary of State for the Colonies.

WM. H. LEE,
Clerk, P.C.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON BAY HOUSE, LONDON,
October 27th, 1868.

SIR,—The Committee of the Hudson's Bay Company have received from Sir C. Lampson and myself reports of the interviews which we have had the honour to have with his Grace the Duke of Buckingham and Chandos, on the subject of the proposed cession to Canada of the Company's territorial rights, and they have anxiously considered how far they would be justified in altering the terms proposed in my letter of May 13th, with a view to meet the objections which have been raised to them.

They understand his Grace to suggest that instead of the Company being entitled to a free grant of 5,000 acres, to be selected by them for every 50,000 acres which shall be alienated by the Government, the whole territory should be at once divided into sections on the map, and that a certain portion of each section should be allotted to the Company by fixed geographical rules, the Company taking the chance as to the value of the land which might fall to its share; and further, that in order to meet the evils which might arise from the existence of so many blocks of wild land free from taxation, the exemption of the Company's wild land from taxes should continue only for a limited period, say, for example, twenty years.

The Committee regret that they are unable to agree to this mode of allotment. One of the chief inducements to their shareholders to accept the proposed arrangements would be that, according to the plan of the Committee, if, as it is hoped, the colonization of the country proceeded rapidly under the new government, the Company would receive blocks of land of moderate size in the vicinity of the new settlements, which would possess an actual value in the market. But if the plan suggested by the Duke of Buckingham were adopted, instead of the grants to the Company proceeding equally with the progress of colonization, the whole country would be dotted over with isolated tracts of wild land belonging to the Company, many of which even if ultimately available for settlement,

* Sess. Papers, Can., 1869, No. 25.

must necessarily remain entirely valueless until long after the expiration of the twenty years, and if taxed would be a heavy burden instead of a source of profit to the Company.

The Committee are willing, however, to agree that the exemption from taxes on the Company's wild land should only apply to each block of 5,000 acres, which they may be entitled from time to time to select, for a period of twenty years from the date of selection. This would give the Company a reasonable time within which to turn each block to profitable account, and at the same time the ultimate liability to taxation would prevent these lands from becoming an obstruction to the free progress of settlement.

The Committee think it right to add that they do not propose that land purchased by the Company should be reckoned in the 50,000 acres; and that the selection of the land by the Company naturally implies that the Company shall bear the cost of such a survey as may be necessary to define the land selected, it being understood that the Company shall have the option of making the survey by means of their own officers.

The Committee are quite willing that land granted for such purposes as roads, churches or schools shall not be liable to the payment of one shilling per acre to the Company, provided that the exemption is restricted to the land actually used in the construction of the work, and that the exceptions are specified in the agreement with the Government for the cession of the Company's rights. They also admit that it is proper that a similar exemption should apply to land set apart as Indian Reserves, on the understanding that these reserves will be made by Her Majesty's Government, as they are informed it is his Grace's intention they shall be, before the Company's territory is transferred to Canada, and that, if at any time before the million sterling is paid to the Company, such land shall be used or granted for other purposes, it shall become liable to the payment of a shilling an acre in common with other land.

With respect to the land which the Committee have asked that the Company may retain as private property round their posts and stations, if 6,000 acres are thought to be too much in that part of Rupert's Land which is suited for settlement, the Committee will consent that the 6,000 acres shall only apply to posts which do not lie within the limits referred to under article 10 in my letter of May 13th, as laid down in Sir E. Head's letter of November 11th, 1863, and that within these limits the extent of land to be retained round each post shall not exceed 3,000 acres, all the lands retained to be free from taxation, except when reclaimed from a wild state.

Lastly, the Committee cannot deny that the stipulation that the Committee shall have power to bring before the Judicial Committee of Her Majesty's Privy Council matters in dispute, is open to the objection that the Privy Council acts only as a Court of Appeal, and as they presume that the Company would be entitled to appeal from the local Courts to the Privy Council, they do not think it indispensable to insist on this demand.

The Committee, in declaring their willingness to make these alterations in the terms which they proposed, are actuated by a sincere desire to arrive at an agreement with Her Majesty's Government; but they are conscious that they would be wanting in their duty if they did not add that at the half-yearly meeting of shareholders, held since my letter of May 13th was written, opinions were expressed strongly adverse to any arrangement for the cession of the Company's territorial rights which did not secure the payment as compensation of a sum of hard money.

Sir Edmund Head, in the concluding paragraphs of his letter of April 13th, 1864, in which terms were proposed similar to those now under discussion, but involving the cession of a part only of the Company's Territory, avowed to the Duke of Newcastle the apprehensions of the Committee that it might be difficult to convince the shareholders that the offers then made were to their advantage; and although the Committee have felt bound not to recede from the terms contained in my letter of May 13th, which were based on their former offers, they cannot conceal from his Grace that they anticipate a very serious opposition on the part of their shareholders to any such arrangement as that which they have put forward.

His Grace will recollect that at our first interview, before the Canadian delegates had started for England, Sir C. Lampson and I strongly insisted upon this point, and that we suggested that if Canada would agree to pay to the Company one million sterling in bonds, such a settlement might be acceptable to our proprietors.

The Committee entirely share this view. The more they consider the very complicated arrangements which have been devised as a substitute for the payment of a sum of money at once, the more they are convinced that it is as much for the interest of Canada as of the Company, that the claims of the Company should be provided for by a direct compensation, and not by contingent payments extending over a long series of years, and by grants of land under stipulations, which, although indispensable to protect the Company from spoliation, would be invidious in the eyes of the future settlers and embarrassing to the Colonial Government.

At the same time the Committee desire me to assure his Grace, that if their terms as now modified are agreed to by Her Majesty's Government, the Committee will use all their influence to induce the proprietors to confirm them.

I have the honor to be, Sir,
Your most obedient servant,

KIMBERLEY.

The Right Honorable C. B. Adderley, M.P.,
Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

1st December, 1868.

MY LORD,—I am directed by the Duke of Buckingham and Chandos to acknowledge the receipt of your Lordship's letter of the 27th October, and to express his Grace's regret that the serious illness of Mr. McDougall, one of the two delegates sent from Canada, which prevented his Grace from communicating with him, should have caused so long a delay in the answer.

His Grace regrets to perceive that the letter under reply does not afford much prospect of an arrangement being come to.

Her Majesty's Government, in the letter of Mr. Adderley of 23rd April to Sir Curtis Lampson referring to the negotiations which took place in 1864, requested to be informed "what terms the Company would be prepared to accept, proceeding on the principles then adopted, namely, that the compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company."

To this your Lordship replied that the Committee were prepared to recommend—

1. That the Company shall surrender all the territory which they hold under their charter, with the reservation of all their posts and stations, with an area of 6,000 acres round each such post or station; this reservation of 6,000 acres, however, not to apply to the Red River Settlement.

2. That the Company shall be entitled to receive 1*s.* for every acre of the land surrendered, which shall be disposed of by the Government whether by sale, lease, or free grant, or parted with in any other manner.

3. That one quarter of the sum received by the Government as an export duty for gold and silver, or on leases of gold and silver mines, or for licenses for gold and silver mining, shall be paid to the Company, the amount to be received under this and the preceding article being limited to a total sum, conjointly, of £1,000,000 sterling.

4. That the Canadian Government shall confirm all titles to land that has been alienated by the Company at Red River, or elsewhere.

5. That whenever the Government shall have sold, leased, granted, or otherwise parted with 50,000 acres, the Company shall be entitled for every such 50,000 acres to a free grant of 5,000 acres of wild land to be selected by them.

6. That no tax be imposed upon any land belonging to the Company not under cultivation, and no exceptional tax shall be imposed upon the Company's other lands or property, or upon the Company's servants.

---

* Sess. Papers, Can., 1869, No. 25.

7. That the disputed matter of the Company's lands in Canada be settled by issuing grants on the footing formerly agreed upon by Mr. Vankoughnet and Mr. Hopkins.

8. That the Canadian Government shall take over from the Company all the materials for the construction of the telegraph now in Rupert's land, and the North-West Territory, on payment of the cost price, and the expenses already incurred with interest.

9. That full liberty to carry on their trade shall be secured to the Company, free from any special or exceptional taxation.

10. That until £1,000,000 sterling, stipulated by articles 2 and 3, shall be paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company, and no import duties shall be levied upon articles imported by the Company into the North-Western Territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir E. Head's letter of 13th November, 1863, the Company to be further entitled to import goods in bond free of duty, through any part of the surrendered territory into the North-Western territory and the aforesaid part of Rupert's Land.

Lastly. That in order to afford to the Company a guarantee for the due fulfilment of these provisions by the Canadian Government, power shall be given to the Company to bring before the Judicial Committee of Her Majesty's Privy Council for decision any matters connected with the carrying into effect the foregoing provisions, in respect of which they may consider themselves aggrieved.

His Grace intimated in reply, that there were "certain points in the terms set forth to which he would not feel at liberty to agree in their present shape," and at the meetings which ensued his Grace expressed his strong objections to the principle of the proposals of the Company respecting reserves of land to be selected from time to time at the discretion of the Company, and to the principle of special exemption from taxation in their favour, and expressed his opinion that there were many points in the other proposals requiring material modification.

Your Lordship's present letter intimates that the Company are unable to agree to certain modifications which suggested themselves during the discussions as modes of avoiding the objections entertained by his Grace, and proceeds to state the changes which the Company are willing to agree to, and which his Grace understands to be as follows:

1st. That the exemption from taxes on the Company's wild lands shall only last for a period of twenty years from the date of selection.

2nd. That any lands purchased by the Company shall not reckon in the quantities of 50,000 acres, in respect of which the Company should be entitled to select 5,000 acres.

3rdly. That the Company shall bear the expense of surveying their blocks of 5,000 acres.

4thly. That lands granted for such purposes as roads, churches or schools, shall not be liable to the payment of one shilling per acre to the Company.

5thly. That the same exemption shall apply to land set apart by Her Majesty's Government as Indian Reserves before the Company's territory is transferred to Canada.

6thly. That with regard to land around posts beyond what is designated the fertile belt, 6,000 acres shall be granted, and that only 3,000 acres shall be the quantity within that belt.

7thly. That the proposed recourse to the Privy Council as a Court of first instance, shall be abandoned.

His Grace is unable to recommend the adoption by Her Majesty's Government of such terms for the surrender of the territorial rights of the Company. Whatever be the future government of the territory, whether by the Hudson's Bay Company or by Canada, or by any other authority, very considerable annual outlay will have, as in all other unsettled countries, to be incurred in clearing roads, maintenance and opening of navigation, etc., and surveying.

For these charges, the produce of the early sales of land is the natural resource.

But by the Company's proposals they would deprive the future Government of any prospect for a long time at least of receiving any income.

1st. They first stipulate, not for a share of the receipts from land, but for a definite

sum per acre, a sum in all probability far in excess of what is likely in practice to be obtained for the greater portion.

2ndly. They stipulate that they shall retain certain reserves around their posts, amounting, therefore, according to the lists of posts handed in by Sir C. Lampson, to upwards of 500,000 acres of the land most likely to be made available for settlement and sale, as being the land surrounding the established posts of the Company, they have, after long experience, retained as the most advantageous positions for trade and occupation, and of which nearly 100,000 acres surround the posts in what is called the fertile belt of the territory.

3rdly. And that they shall also receive a share of mineral rights, and confirmation of all titles.

4thly. They proceed to stipulate for a further reserve of one-tenth of the whole territory, and that the Company shall have this tenth in blocks of 5,000 acres to be selected as each successive 50,000 acres is alienated and not merely to select in the same locality, but anywhere ; so that for instance, if land is alienated on the higher parts of the Rocky Mountains, at Jasper House for example, in consequence of the mining operations in that district, or for fishing stations or for mining purposes on the coast of Hudson's Bay or Labrador, the Company should be entitled to select the proportionate reserve in such part of the most fertile region as they may consider will realize the utmost profit to them, whether by its cultivation or development, or by its power of obstruction to others.

These lands moreover are to be exempt from taxation for a period of 20 years from selection, and the lands retained round the posts to be entirely free from taxation unless reclaimed.

These conditions his Grace cannot accede to. His Grace would, however, recommend Her Majesty's Government to agree to a surrender on the following conditions :

1st. That the land to be retained by the Company in the neighbourhood of their posts shall vary according to the importance of the post : in no case whatever exceeding 6,000 acres in all for any one post, including the cultivated or reclaimed land now occupied, and in no case exceeding 3,000 acres within the fertile belt for principal posts, and 500 acres for minor posts ; the additional land to be set out so as not to include frontage to rivers or tracks, roads, or portages.

2nd. The Company to receive one-fourth share of all receipts from land. If any free grants of land be made for other than public purposes, such lands shall be deemed to have been sold at one shilling per acre.

3rd. That one quarter of the sum received by the Government as an export duty for gold and silver mines, or for licenses for gold and silver mining, shall be paid to the Company, the amount to be received under this and the preceding article being limited to a total sum conjointly of £1,000,000 sterling.

4th. That the Imperial Government shall confirm all titles to land that has been alienated by the Company at Red River or elsewhere.

5th. That the Company shall have the option of selecting five lots of not less than 200 acres each in each township, whenever it is set out, on payment of ratcable cost of survey.

6th. That no exceptional tax shall be imposed on the Company's lands, trade, or servants.

7th. That full liberty to carry on their trade shall be secured to the Company.

8th. The Company to have similar reserves granted them in connection with their posts in the North-West Territory.

9th. The boundary lines between Hudson's Bay and Canada to be defined, and between Hudson's Bay and North-West Territory to be defined by a natural or geographical boundary agreed on.

10th. No wild lands to be taxable until surveyed and marked.

11th. That whenever the payment of £1,000,000 sterling under Article 3 shall have been made as therein provided in cash, or otherwise extinguished by any payment or commutation by Canada to the satisfaction of the Company, the rights of the Company to further selections of lots, to royalties, and share of land receipts shall cease.

12th. Such lands as Her Majesty's Government shall deem necessary to be set aside for the use of the native Indian population shall be reserved altogether from this arrange-

ment, and the Company shall not be entitled to the payment of any share of receipts or any royalty therefrom, or right of selection in respect thereof under previous articles, unless for such part, if any, of these lands as may be appropriated with the consent of the Crown to any other purpose than that of the benefit of the Indian natives.

If these terms are approved, Her Majesty's Government will be prepared to conclude an arrangement, and to submit it to the Canadian Government for their favourable consideration; but if the Company shall not assent to these conditions, Her Majesty's Government will consider themselves unpledged by any of the offers that have been made.

I am, etc.,

C. B. Adderley.

The Earl of Kimberley.

The Deputy-Governor of the Hudson's Bay Company to the Under-Secretary.*

Hudson's Bay House,

London, 22nd December, 1868.

Sir,—I have the honour to enclose for the information of the Right Honourable the Secretary of State for the Colonies, extracts of letters recently received from Governor Mactavish, dated Fort Garry, Red River Settlement, October 10th and November 11th, from which it will be seen that the Canadian Government have intimated through an agent sent to Red River by the direction of the Canadian Commissioner for Public Works, their intention to construct a road from Fort Garry to the Lake of the Woods, through the territory of the Company. A trespass upon the freehold territory of the Company must be committed in order to carry out this intention.

The Committee cannot but look upon this proceeding as a most unusual and improper one, especially as negotiations are at present pending for the transfer of the territory of the Company to Canada. This trespass will be an actual encroachment on the soil of the Company, and that too by a Government which has constantly up to this time and still disputes the right of this Company over that soil.

The Committee therefore ask for the intervention of Her Majesty's Government, but at the same time they beg leave to say that any application by Her Majesty's Government or the Canadian Government for permission to make this road will be favourably entertained.

I have, &c.,

C. M. Lampson,
Deputy-Governor.

Sir Frederic Rogers, Bart., etc., etc., etc.,
Colonial Office.

Extracts of Letters from Mr. Mactavish, Hudson's Bay Company's Governor of Rupert's Land, to W. G. Smith, Esquire, Secretary, dated respectively Fort Garry, Red River Settlement, the 10th October and 11th November, 1868, referred to in the preceding Letter.*

10th October.—"I am informed that the Canadian Government have forwarded in charge of a Mr. Snow, a quantity of provisions which Mr. Snow has written to one of the merchants here to provide freight for from Georgetown, and appointed the 15th instant as the date on which the supplies will be at Georgetown. Mr. Snow himself says nothing on the subject, but it is rumoured here that he comes up for the purpose of superintending the making of a cart road from this place to the Lake of the Woods, and that the provisions that he is bringing are to be used in payment of labour on the above road."

---

* Sess. Papers, Can., 1869, No. 25.

11th November.—"Mr. Snow, who I before advised you as expected here to superintend in making a road from this settlement to the Lake of the Woods, with a view to opening direct communication with Canada, arrived some time ago, and is now on the eve of commencing operations. He has brought in with him some provisions with which he purposes paying for labour on the road. On his arrival here, he called on me to show his instructions from the Commissioner of Public Works. These contained nothing of any consequence beyond the expression of a hope on the part of the Commissioner that the Company's agent here would offer no opposition to Mr. Snow's operations, but would leave the matter entirely in the hands of the Imperial Government, which (as generally people here regard Mr. Snow's arrival as opportune on account of the scarcity of provisions), I agreed to do; and without instructions to protest against Mr. Snow's action, I did not think it politic to do so."

THE UNDER-SECRETARY TO SIR GEORGE E. CARTIER, ONE OF THE CANADIAN DELEGATES.*

DOWNING STREET,
30th December, 1868.

SIR,—I am directed by Earl Granville to transmit to you a copy of a letter which his Lordship has received from the Deputy Chairman of the Hudson's Bay Company, relating to some steps which have been taken under authority of the Canadian Government, and from which they apprehend some invasion of their territorial rights.

His Lordship will be glad to receive from you or from Mr. McDougall any explanation with which you or he may be able to furnish him of the steps taken by the Canadian Government.

I am, Sir,
Your obedient Servant,

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.

THE CANADIAN DELEGATES TO THE UNDER-SECRETARY.*

WESTMINSTER PALACE HOTEL, LONDON,
January 16th, 1869.

SIR,—We have the honour to acknowledge receipt of your letter of the 30th ult. (with its enclosures), stating that you were directed by Earl Granville to transmit to us a copy of a letter which his Lordship had received from the Deputy Chairman of the Hudson's Bay Company, relating to some steps which have been taken under the authority of the Canadian Government, and from which the Company apprehend some invasion of their territorial rights.

You inform us that his Lordship will be glad to receive from us any explanation which we may be able to furnish him of the steps taken by the Canadian Government.

We have read the letter of the Deputy Chairman, and extracts from the letters of Governor Mactavish, and have much pleasure in being able to furnish his Lordship with what we hope will prove satisfactory information on the subject of the Hudson's Bay Company's complaint.

1. In the month of September last, very precise information reached the Canadian Government that, in consequence of the complete destruction of their crops by locusts, the people of the Red River Settlement, numbering probably from 12,000 to 15,000 souls, were in imminent danger of starvation during the winter about to set in.

---

*Sess. Papers, Can., 1869, No. 25.

2. Numerous and earnest appeals for aid had already been made to the Canadian public by writers in the newspapers, and by clergymen and others acquainted with the country. The Right Reverend Robert Machray, Lord Bishop of Rupert's Land, a member of the Council of Assiniboia and so far a representative of the Company, visited Ottawa, and urged upon members of the Canadian Government the duty of prompt assistance to avert the threatened calamity.

3. No steps had been taken (so far as the Government could learn) by the Hudson's Bay Company to provide supplies, and aware that a few days' delay at that season might render it impossible to get provisions to Red River in time to afford relief, the Canadian Government appropriated the sum of twenty thousand dollars ($20,000) towards the construction of a road from Lake of the Woods to Fort Garry. The Minister of Public Works (one of the undersigned) was directed to expend the principal part of this sum in the purchase of provisions, which were to be forwarded with all possible despatch to the Red River settlement, and offered to the settlers, not as alms, but in exchange for their labour on a public work in their own vicinity, and of the highest utility to their settlement.

4. A confidential and experienced agent proceeded at once to St. Paul's, Minnesota, and succeeded in forwarding a considerable supply of provisions before the close of navigation. A further quantity has reached Fort Abercrombie, an American post in Dakota Territory, from which point it can be sent to the settlement in the Spring.

5. Information has reached the undersigned since their arrival in England, that the Government Agent had, in accordance with his instructions, conferred with the local authorities on his arrival at Fort Garry ; that he had received their approval and promise of assistance ; that his timely aid was a cause of much joy and thankfulnes in the settlement, and that he had proceeded with a large force of labourers to the limit of the prairie country, some thirty miles from Fort Garry, towards Lake of the Woods, and had there commenced the construction of the road.

6. The immediate object of the Canadian Government in taking the steps complained of, was, to supply food to a starving community about to be imprisoned for six months in the heart of a great wilderness, without roads, or means of communication with their fellow-subjects, and to supply it in the way most acceptable to a high-spirited people, viz., in exchange for their labour. It was thought that even the Hudson's Bay Company might look with favour upon a public work which, when completed, will prove a valuable protection to those under their government against similar dangers in the future. On behalf of the Canadian Government, we deny that a "trespass" has been committed, or that our action in this matter was intended to forestal or embarrass negotiations which the Imperial Parliament had directed to be undertaken for the transfer of the North-Western Territories and Rupert's Land to the Dominion of Canada.

The foregoing explanation may perhaps be deemed sufficient to enable Earl Granville to answer the complaint of the Hudson's Bay Company against the Canadian Government, but the undersigned beg leave to add one or two observations which in their opinion this extraordinary demand for the "intervention of Her Majesty's Government," both invites and justifies. If the Hudson's Bay Company, who claim the right to hold and govern the territory in which the alleged "trespass" has taken place, had performed the first duty of a government towards its people, by providing them with easy means of communication with the outer world, or if they had shown themselves either able or willing to meet the threatened calamity by a prompt effort to forward sufficient supplies to the settlement before the close of navigation, the Canadian Government would have rested happy in the belief that neither humanity nor public policy required or justified their interference.

The assertion of the Deputy Governor of the Hudson's Bay Company that the country between Lake of the Woods and Red River is "the freehold territory of the Company," and that the so-called "trespass" of the Canadian Government in sending provisions to the starving settlers, and assisting them to make a road for their own convenience and safety hereafter, is "an actual encroachment on the soil of the Company," might, if unnoticed by us, be claimed as another proof or admission of the rights of the Company in that part of the Continent. We, therefore, beg to remind his Lordship that the boundaries of Upper Canada on the north and west were declared under the authority of the Constitutional Act of 1791, to include "all the territory to the westward and

southward" of the "boundary line of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada." Whatever doubt may exist as to the "utmost extent" of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between Lake of the Woods and Red River.

The Government of Canada, therefore, does not admit, but, on the contrary, denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed.

We have, etc.,

G. E. Cartier,
Wm. McDougall.

Sir Frederic Rogers, Bart., etc., etc., etc.,
Colonial Office.

The Governor of the Hudson's Bay Company to the Under-Secretary.*

Hudson's Bay House,

London, February 2nd, 1869.

Sir,—I have the honour to acknowledge your letter of the 28th January, addressed to the Deputy-Governor of this Company, enclosing a communication from Sir G. Cartier and Mr. McDougall, on the subject of the recent proceedings of the Canadian Government in the matter of the construction of a road through the Company's territory between Fort Garry and the Lake of the Woods.

After the distinct statement contained in Sir Curtis Lampson's letter of the 22nd December, that the Company, while protesting against a trespass on their land, were prepared favourably to entertain any application for permission to make such a road, either on the part of the Imperial or of the Canadian Government, the Committee think it unnecessary to discuss the greater portion of the letter of the Canadian Ministers. Their objection is not to the road being made, but to its being undertaken by the Canadian Government as a matter of right, as though the territory through which it is to pass were Canadian. Such a step, taken at a moment when negotiations are in progress for the transfer of the Company's possessions to Canada, and taken by a Government which openly disputes their title to this portion of them, could not have been allowed to pass unchallenged without derogating from the Company's rights. The Canadian Government themselves seem to have been alive to this. Mr. McTavish states that the agent of that Government (Mr. Snow) on arriving at the Red River, communcated to him his instructions from the Commissioner of Public Works in Canada, containing the expression of "a hope on the part of the Commissioner that the Company's agent here would offer no opposition to Mr. Snow's operations, but would leave the matter entirely in the hands of the Imperial Government." Governor McTavish, upon this, very properly allowed Mr. Snow to commence his operations; and so far as this Company is concerned, no impediment has been, or will be, offered to the prosecution of the work.

If it were worth while to discuss that part of the letter of the Canadian Ministers which refers to the circumstances under which the construction of the road was ordered, the Committee would be able to show that the Company had in no way failed in their duty to the colony; but that they had promptly taken measures for the relief of its inhabitants and had supplied large sums, both by direct grants and by subscriptions raised under their auspices for that purpose, at a period anterior to the appropriation of the Canadian road grant. They would also be able to point out how the delay which has occurred in opening up communications and otherwise developing the resources of the Red River Settlement is due to the restraint which has been imposed upon them by Her Majesty's Government at the request of Canada, and not to any negligence or indifference of their own.

* Sess. Papers, Can., 1859, No. 25.

But the Committee desire to avoid the raising of a false issue, and they accordingly instruct me to re-state to Earl Granville the precise complaint which they have to make. It is this:—that while negotiations are going on for the acquisition of their territory by Canada, the Canadian Government are endeavouring to exercise rights of ownership over a portion of that territory, to the exclusion of the Company, and to the prejudice of their title. This they are doing by virtue of an old claim which they have repeatedly advanced, which the Company have invariably disputed, and have declared themselves ready to contest before a court of law, and which Her Majesty's Government, acting under the advice of various law officers of the Crown, have declined to endorse.

The Canadian Government have hitherto shown no inclination to bring their claim to the test of a judicial decision, and in the absence of any such decision, the Committee consider it not unreasonable to ask that due respect should be paid to the Company's uninterrupted possession of the territory for two centuries, and to the numerous and weighty legal opinions which have from time to time been given in their favour.

In appealing to Earl Granville for support in this matter, instead of entering into a controversy with Canada, or taking legal steps to enforce the Company's rights, the committee have been actuated by a desire to proceed as far as possible in accordance with the views and wishes of Her Majesty's Government, as they have endeavoured to do throughout the pending negotiations for the establishment of a settled form of Government at the Red River. They desire now respectfully, but confidently, to claim the support and protection of the Colonial Minister against any invasion of the Company's rights which may have been prompted or facilitated by the policy which they have adopted in order to meet the wishes of the Colonial Office.

I have, etc.,

STAFFORD H. NORTHCOTE.

Sir Frederic Rogers, Bart.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, January 13th, 1869.

SIR,—I have the honour to acquaint you, for the information of Earl Granville, that I was elected by the shareholders of this Company on Tuesday, the 5th instant, to the office of Governor, vacant by the resignation of the Earl of Kimberley.

It now becomes my duty to address you in reply to Mr. Adderley's letter, dated the 1st December, 1868, which was received by my predecessor on the eve of his resignation, and to which, in consequence of that event, the Committee have not been able to send an earlier answer.

Before making any observations upon the particular topics discussed in Mr. Adderley's letter, I am desired by the Committee to assure Lord Granville that they continue sincerely anxious to promote the object with a view to which this Company was reconstructed five and a half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization; that they adhere to the opinion expressed in their resolution of the 28th August, 1863, viz., that the time has come when it is expedient that the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown; and that they cheerfully accept the decision of Her Majesty's Government, communicated to them in Mr. Adderley's letter of the 23rd April, 1868, viz., that the whole of the Company's territory should, under proper conditions, be united with the Dominion of Canada, and placed under the authority of the Canadian Parliament.

Acting in accordance with the wish of Her Majesty's Government as conveyed to them in Mr. Elliot's letter of the 23rd January, 1867, the Committee have declined to encourage overtures which have been made to them by private persons for the purchase of portions of

* Sess. Papers, Can., 1869, No. 25.

the Company's territory with a view to their colonization, and have kept the whole question in abeyance during the time that the negotiations which have led to the confederation of the British Provinces constituting the Dominion of Canada were proceeding. In the whole of that time they have taken no steps which could give rise to fresh complications, or could place any new difficulty in the way of the admission of their territory into the confederation when the proper moment should arrive ; and when they were informed by Mr. Adderley's letter, of the 23rd of April, that the Parliament of Canada had addressed Her Majesty upon this subject, and were requested to state the terms which the Company would be prepared to accept, proceeding on the principle adopted in the interrupted negotiation of 1864, they unhesitatingly complied with the desire of the Government.

It is therefore with surprise, as well as with regret, that they have learnt from the letter now under reply that the terms proposed by them, even when most strictly in conformity with the principles adopted in 1864, are considered by Her Majesty's Government to be inadmissible, and not to afford much prospect of an arrangement being come to. They find, for instance, that the stipulation that the Company should receive one shilling per acre on lands hereafter sold, which was originally suggested to the Committee by his Grace the late Duke of Newcastle, in Mr. Fortescue's letter of March 11th, 1864, and which has never hitherto been called in question, is the first point to which exception is now taken. Objections are also raised against several other proposals which have been long before the Government, while no notice at all is taken of some which have been made for the first time with a view to the protection of the Company's trade, and with regard to which the Committee are left in ignorance, whether they are considered admissible or not.

The Committee, although somewhat embarrassed by this apparent change in the spirit of the correspondence, desire me, however, to make the following observations upon some of the remarks contained in Mr. Adderley's letter, in order that there may be no misapprehension as to the bearing of their proposals :

The Committee are aware that, as is stated in Mr. Adderley's letter, in order to prepare the country for settlement, very considerable annual outlay will have to be incurred, and that for this charge, the produce of the early sales of land is the natural resource ; but they are at a loss to understand upon what ground it is alleged that their proposals would deprive the future Government of the ceded territory of "any prospect, for a long time at least, of receiving any income."

The only part of the territory in which it is probable that any early or extensive settlement will take place is the part known as the fertile belt. It has been confidently asserted by independent persons who have travelled through the country, that a great part of this land is not inferior in quality, or in advantages of climate, to the adjoining United States territory now forming the State of Minnesota, and it has been justly pointed out that, being prairie land, it does not require much labour to render it fit for cultivation. But the price of land in Minnesota ranges, as the Committee are informed, from five shillings to one pound per acre. The Committee think, therefore, that the fixed payment of one shilling per acre, proposed by the Duke of Newcastle, and accepted by them as a basis of compensation, cannot be deemed to be unreasonable, in so far as related to land sold within the limits set forth in Sir Edmund Head's letter of the 11th of November, 1863.

As regards any portions of land lying outside those limits which may possibly be sold, the Committee think it very improbable that such sales will take place except for mining purposes, in which case the payment of a shilling per acre could hardly be deemed excessive. In order to save trouble and to obviate disputes, therefore, the Committee proposed the fixed payment of one shilling per acre in respect of all sales wherever they may take place, and they believe that the arrangement would have been, on the whole, more favourable to Canada than that suggested by Mr. Adderley.

Mr. Adderley proceeds to remark, with reference to Lord Kimberley's proposal that the Company should retain certain reserves around their posts, that the reservations would amount to upwards of 500,000 acres. It was, however, stated by Lord Kimberley and the Deputy-Governor at an interview with the Duke of Buckingham upon this subject, that the Committee were willing to confine their claim for reserves to the limits defined by Sir Edmund Head's letter of the 11th November, 1863 ; that they were prepared to

agree that such reservations should be measured by the importance of the posts to which they were to be attached, and should in no case exceed 3,000 acres. The total quantity of land to be retained by the Company under this arrangement, would not exceed 50,000 acres. The Committee cannot agree to the absolute exclusion of these reserves from all frontage to "rivers or tracks, roads or portages" which would render them entirely valueless, although they would have been ready to consider any reasonable limitation of these special advantages.

As regards the right of selecting lands for the Company in proportion to the quantities sold from time to time by the Government, the Committee desire to call Lord Granville's attention to the reasons given in Sir E. Head's letter of the 13th April, 1864, for adopting this mode of reservation in preference to that of "setting apart beforehand a number of isolated tracts of wild land, dotted over the surface of the colony, and calculated to impede the free flow of settlement in the territory." Their proposal was framed with reference to sales in the fertle belt only, and it never entered into their minds to comtemplate such contingencies as those suggested in Mr. Adderley's letter. In order, however, to obviate all cavil upon this point, they would have been quite willing to limit the Company's right of selection to the case of lands sold or alienated within Sir E. Head's limits, provided that it were agreed that no alienations should take place beyond those limits, except either for distinctly public purposes or for the *bona fide* carrying on of agricultural or mining operations. As regards Mr. Adderley's proposal that the right of selection should be confined to five lots of 200 acres each in each township, as it is set out, the Committee can only remark that the character of this proposal must depend upon the size of the township, of which no indication has been given.

The Committee still adhere to the opinion that under the peculiar circumstances of the proposed transfer of their territory, it would be reasonable that their wild lands should for a limited time be exempt from taxation, in order to allow them a fair opportunity of bringing them into profitable cultivation.

They observe that Mr. Adderley makes no reference to the tenth stipulation contained in Lord Kimberley's letter of the 13th May, viz., that until the stipulated sum of £1,000,000 sterling has been paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company, nor any import duties on articles imported by them into the North-Western Territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir Edmund Head's letter of November 11th, 1863. This is a point to which the Committee attached very great importance. If it had been proposed by the Canadian Government to make a direct purchase of the Company's territory, and to pay the price for it at once, the Company would, of course, have accepted their fair share of the burdens which annexation might be expected to involve. But if the purchase money is to be withheld until the Canadian Government have sold off 20,000,000 acres of the land, or have realized a considerable sum by the produce of mining operations, it is reasonable that the pressure of the fiscal burdens, which would fall almost exclusively upon the Company's trade, should be suspended also. Otherwise it might happen that, in consequence of the neglect or the inability of the Canadian Government to proceed with the settlement of the territory, the Company would be subjected to very heavy contributions to the colonial treasury without receiving the smallest benefit in return. As an illustration of the extent to which they might thus be injured, were no limitation placed upon the colonial power of taxation, I may observe that according to the present Canadian tariff, the duty upon the value of the Company's imports alone would amount to about £20,000 a year, while any export duty that might be laid upon their furs would operate still further to their disadvantage. The Committee feel confident that Lord Granville will acknowledge the reasonableness of their taking precautions against such a contingency.

The Committee have desired me to offer to Lord Granville these explanations of their proposals, in order to show that they have done their best to comply with the desire of Her Majesty's Government, that they should submit a scheme founded on the principles of the negotiations of 1864. They have not, however, failed to perceive from an early period of the lengthened correspondence which has taken place between them and the Government, that those principles necessarily gave rise to many difficulties; and they have

felt this the more strongly since the negotiations, originally commenced between the Company and Her Majesty's Government, have virtually become negotiations between the Company and the Government of Canada. They cannot disguise from themselves the danger which exists that arrangements so complicated, and involving so many topics for future discussion, are likely to lead to the Company's being placed in a position of antagonism to the Government of Canada, and to the creation of a state of things injurious not only to their own interests, but to the welfare of the country itself. They are sincerely anxious to co-operate with the Canadian Government in the settlement, development, and improvement of the territories with which they have been so long connected, and they believe that if the arrangement between them can be placed on a satisfactory footing, it will be in their power to render material assistance to the colonial authorities in this respect. They believe that if a simpler arrangement than that which has recently been under discussion, could be adopted, and if the Canadian Government were prepared to complete the purchase of the territory at once by the payment of a sum of money or by the delivery of bonds, it would conduce to a more satisfactory result than the prolongation of a controversy as to the minute points of such a scheme as has been under consideration.

Should Lord Granville be of this opinion, and should his Lordship think it desirable to recommend any proposal of the kind to the Canadian delegates, this Committee will gladly place themselves in fuller communication with him on the subject.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

Sir Frederic Rogers, Bart.

THE UNDER-SECRETARY TO THE CANADIAN DELEGATES.*

DOWNING STREET,
18th January, 1869.

GENTLEMEN,—I am directed by Earl Granville to transmit to you, for any observations which you may wish to offer upon it, the enclosed copy of a letter from the Hudson's Bay Company in answer to the proposals made to them by the Duke of Buckingham and Chandos in the letter from this Department of the 1st of December last, with respect to the proposed cession to the Crown of the Company's territorial rights in British North America.

I am, Gentlemen,
Your obedient servant,

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.
W. McDougall, Esq., C.B.

THE CANADIAN DELEGATES TO THE UNDER-SECRETARY.*

WESTMINSTER PALACE HOTEL,
LONDON, February 8th, 1869.

SIR,—We have the honour to acknowledge the receipt of your letter of the 18th ultimo, enclosing a copy of Sir Stafford Northcote's letter of the 13th ultimo, in reply to proposals made to the Hudson's Bay Company for the cession to the Crown of their territorial rights in British America, by his Grace the Duke of Buckingham and Chandos, in the letter of Mr. Adderley of the 1st December last.

* Sess. Papers, Can., 1869, No. 25.

You state that Earl Granville directed you to transmit this document to us for any observations which we may wish to offer upon it. His Lordship's courtesy and consideration in sending us a copy of Sir Stafford Northcote's letter and inviting us to express our views upon it are gratefully acknowledged, but upon reflection we thought it would be expedient to refrain from any formal expression of our opinion on new and indefinite propositions, until we had received some intimation of the view which his Lordship was likely himself to take of them, or of the policy in respect to the general question which Her Majesty's present advisers intend to adopt.

At an interview with which we were favoured by Earl Granville on the 26th ultimo, he expressed his preference for a less complicated mode of dealing with the Hudson's Bay question than that proposed by the Duke of Buckingham and Chandos, and requested us to communicate to him our observations on the reply of Sir Stafford Northcote, and especially on the proposition with which his letter concludes, viz., that the Canadian Government should "complete the purchase of the territory at once, by the payment of a sum of money or by the delivery of bonds."

As we have had but few opportunities to confer with his Lordship since his accession to office, it may be proper, before considering Sir Stafford Northcote's letter, to state the position of the Canadian Government, as we apprehend it, in this negotiation.

The British North America Act of 1867 affirmed the policy of uniting under one Government all the colonies, provinces, and territories of British North America. Three provinces were united at once, and provision was made by the 146th section, for the admission into the union of the remaining colonies, on address to Her Majesty by their respective Legislatures and the Parliament of Canada.

The North-west Territories and Rupert's Land, or either of them, are to be admitted on the address of the Parliament of Canada alone, and on such terms and conditions as the Canadian Parliament may in its address express, and Her Majesty approve.

In pursuance of the policy of the Imperial Parliament thus distinctly affirmed, the Canadian Parliament at its first session under the new constitution, adopted an address to Her Majesty for the incorporation of the North-west Territory and Rupert's Land with the Dominion of Canada. The terms and conditions expressed in the address were,—

1st. That Canada should undertake the duties and obligations of Government and legislation in respect of those territories.

2nd. That the legal rights of any corporation, company, or individual within the territories should be respected, and that provision should be made for that purpose by placing those rights under the protection of courts of competent jurisdiction.

3rd. That the claims of the Indian tribes to compensation for lands required for purposes of settlement should be considered and settled, in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The above were the only terms and conditions which, in the opinion of the Canadian Parliament, it was expedient to insert in the Order in Council, authorized by the 146th section.

His Grace the Duke of Buckingham and Chandos, on receiving the address of the Canadian Parliament, consulted the law officers of the Crown, who advised, among other things, that "there would be much difficulty created by the existence of the charter" of the Hudson Bay Company, "to putting into execution the powers of the 146th section of the British America Act, 1867, assuming that the Hudson's Bay Company were adverse to the union."

A Bill was thereupon carried through the Imperial Parliament, apparently to remove the "difficulties" which the law officers had discovered. It reverses the order of procedure contemplated by the Act of 1867, and observed by the Canadian Parliament in its address, and makes the assent of the Company a condition precedent to the transfer.

The Canadian Government were not consulted as to the terms of this Act; they could not understand why it was necessary, and greatly doubted the expediency of passing it.

The Duke of Buckingham and Chandos, having opened negotiations with the Hudson's Bay Company under the authority of the Act last mentioned, invited a delegation from the Canadian Government to confer with him in this country. The undersigned, duly

commissioned for that purpose, repaired to London in October last, and had frequent interviews with his Grace before his retirement from office.

The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st December last, were not made at our suggestion, although we were disposed to think (and so informed his Grace) that if the Company accepted them, the Canadian Parliament might be persuaded to undertake the duties of legislation and government in the territories on the conditions specified.

The Company, through Sir Stafford Northcote, have declined to accept either the principle or the mode of settlement proposed by the late Government, but suggest a new and summary method of closing the negotiations, by demanding that the Canadian Government should, by a payment in cash or bonds, "complete the purchase of the territory at once." No sum is mentioned, and no data given from which it can be inferred. Under these circumstances, we are asked, as representatives of the Canadian Government, to communicate to Earl Granville any observations we may wish to offer on this reply and proposition of the Company.

His Lordship will readily perceive from the foregoing recital, that, as representatives of the Canadian Government, we are in the position of spectators of a negotiation, begun and carried on upon principles and under conditions to which we are strangers, rather than that of assenting principals, responsible for its initiation, and bound by its results.

Without undertaking, therefore, that our views on every point will be approved by the Canadian Government, we proceed most respectfully to offer a few observations on Sir Stafford Northcote's reply to the recent proposals of the Imperial Government.

It will be observed that two things are assumed in these proposals to the Company, which the Canadian Government have always disputed.

1st. That the charter of Charles II. is still valid, and grants the right of soil, or freehold, of Rupert's Land to the Company.

2nd. That Rupert's Land includes the so-called "Fertile Belt," extending from the Lake of the Woods to the Rocky Mountains.

The law officers of the Crown in England have, on two or three occasions, given their opinion in favour of the first assumption, but never, so far as we are aware, in favour of the second. The report of the law officers in 1857 admits that the geographical extent of the territory granted must be determined by excluding the country that "could have been rightfully claimed by the French as falling within the boundaries of Canada" (which the charter itself excludes by express words), and states that "the assertion of ownership on important public occasions, as at the treaties of Ryswick and Utrecht," should be considered; and also "the effect of the Acts of 1774 and 1791." The most recent opinion of the law officers of the Crown which we have seen (January 6th 1868), as to the rights of the Hudson's Bay Company, does not even by implication support their present claim to the fee simple of nearly one-third of the American continent. On the contrary, Sir John Karslake and his colleagues conclude their report with the emphatic statement that it is "very necessary, before any union of Rupert's Land with Canada is effected, that the true limits of the territory and possessions held under the charter should be accurately defined." An assumption, therefore, which covers so much ground, and is unsupported by any competent legal authority; which ignores the repeated protests and claims of Canada; and seeks to supply a basis upon which a surrender for valuable consideration may be made,—is, to say the least, a most favourable assumption for the Company. We notice these points in Mr. Adderley's letter before remarking on Sir Stafford Northcote's reply, to prevent the possible inference that we have acquiesced in them.

Sir Stafford Northcote assures Lord Granville that the Company "continues sincerely anxious to promote the object with a view to which the Company was reconstructed five and a-half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization." It would be tedious to quote the numerous and positive averments by members and governors of the Hudson's Bay Company, in the course of official inquiries during the last fifty years, that their territories (in which they included the Red River and the Saskatchewan districts) are totally unfit for colonization. The evidence of Sir George Simpson before the House of Commons Committee of 1857, is a fair sample of the views heretofore entertained and avowed by the representatives of the Company.

Vide Commons Report, 1857; Questions 716, 717, 718, 719, etc.) Mr. Ellice, for many years the ruling spirit of the Company, declared before the same Committee that the Red River settlement was an "unwise speculation," and "had failed;" that "the climate is not favourable;" that the Saskatchewan is a country capable of settlement only when "the population of America becomes so dense that they are forced into situations less fit for settlement than those they occupy now;" that the winters are "rigorous," and the country badly off for "fuel," etc. (Questions 5840 and 5847.)

With such views of the unfitness of the country for settlement, and avowing their belief that colonization and the fur trade could not exist together, it is not surprising that the Company have always cherished the latter, which was profitable, and discouraged, and, as far as possible, prevented the former, which had proved an "unwise speculation." It is true that the Company was "re-constructed" in 1863, with loud promises of a new policy. A great road across the continent was to be made, a telegraph line was to be put up, and emigration and colonization developed on a large scale. The Duke of Newcastle, then Secretary of State for the Colonies, was so much impressed by the zeal and public spirit of the gentlemen who effected the reconstruction, that he wrote despatches to the Canadian Government on their behalf, and evidently believed that a new era was about to open in the North-West, and the wild animals and fur traders retreat before the march of "European" settlers. The stock of the old Company, worth in the market about £1,000,000, was bought up, and by some process which we are unable to describe, became £2,000,000. A show of anxiety to open postal and telegraphic communication was made, and "heads of proposals" were submitted to the Governments of Canada and British Columbia, which on examination were found to embrace a line of telegraph only, with the modest suggestion that the two Governments should guarantee the company a profit of not less than 4 per cent. on their expenditure! A proposal so absurd could only have been made to be rejected, and it was rejected accordingly. The surplus capital of the reconstructed Company, which was called up for the avowed purpose of opening their territories to "European colonization, under a liberal and systematic scheme of land settlement," has never been applied to that purpose. Five and a half years have passed since the grand scheme was announced to the world, but no European emigrants have been sent out, no attempts to colonize have been made. Sir Stafford Northcote was not probably aware, when he vouched for the *bona fides* of the Hudson's Bay Company as promoters of colonization, that a solemn vote of the shareholders was taken in the month of November, 1866, which condemned and rejected the policy of colonization, absolutely and definitively.

While unable, for the reasons stated, to concur in Sir Stafford Northcote's assurance that the Hudson's Bay Company are anxious to promote colonization, we are gratified to learn that they "adhere" to the resolution of 28th August, 1863, that the time has come when it is expedient that "the authority executive and judicial over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown."

The first remark we have to make upon this reference to the resolution of 1863 is, that it admits the continued incapacity of the Company as a *governing* power; the second, that if this was true in 1863,—if at that time it had become expedient to substitute the authority of the Crown for that of the Company,—it is much more expedient if not absolutely necessary, now; and third, that if the Company are to be relieved of the duty and cost of government which their charter imposes, and which they admit they do not and cannot properly discharge, compensation should be made, not *to* the Company, as is claimed, but *by* the Company to those who take the burden off their shoulders.

We confess we have failed to discover any evidence, and therefore cannot believe, that the Company have "cheerfully" accepted the decision of Her Majesty's Government, "that the whole of the Company's territory should, under proper conditions, be united with Canada." A brief notice of the *acts*, in contrast with the *professions* of the Company, will, we think, account for the ill success of our researches and justify our incredulity.

The representatives of the Company, while declaring before the House of Commons Committee in 1857 (as we have already shown) that their territories were "unfit for

settlement," professed their readiness to surrender any portion of them that might be desired by the Imperial or Canadian Government for that purpose.

Mr. Ellice declared in the most unqualified terms, not only that the Company was willing to surrender, but that it was the duty of the Government to see that no mere trading corporation obstructed "for one moment," nor to the extent of "one acre of land fit for settlement," the "dominion of the actual settlers." (Commons Report, 1857; questions 5859, 5860 and 5933.)

The Governor of the Company informed the Colonial Secretary (18th July, 1857,) that an inquiry into the "geographical extent of the territory granted by their charter," which the law officers had recommended, was of little importance, because, if the object of the inquiry was "to obtain for Canada land fit for cultivation and the establishment of agricultural settlers, the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cession," he assured Mr. Labouchere, "would be a matter of no difficulty between Her Majesty's Government and the Company."

Mr. Ellice had previously told the House of Commons Committee, that the question of boundary was "of no importance at all," because "if the Province of Canada requires any part of the territory, or the whole of it for purposes of settlement, it ought not to be permitted for one moment to remain in the hands of the Hudson's Bay Company." He added that "less money than would be spent in a litigation upon the subject would be sufficient to indemnify the Hudson's Bay Company for any claim which they could have on giving up any disputed part of their territory."

These assurances induced the Committee to negative propositions for ascertaining by a judicial inquiry the validity of the charter, or the position of boundaries, and to report in favour of annexing to Canada "such portion of the land in her neighbourhood as may be available to her for the purposes of settlement, with which she is willing to open and maintain communication, and for which she will provide the means of local administration." The Committee "trusted" that there would be "no difficulty in effecting arrangements as between Her Majesty's Government and the Hudson's Bay Company" for ceding the territory on "equitable principles."

It may be proper to remind Earl Granville, that leading members of the Committee of 1857, taking the offers of the Company on the subject of colonization to mean what the language of their representatives imported, strongly opposed the recommendation to leave the question open for "amicable adjustment" upon "equitable principles," with the certainty of protracted negotiation and a chance of ultimate disagreement. Mr. Gladstone accordingly submitted resolutions for a prompt and definitive settlement of the whole question. He proposed—

1st. "That the country capable of colonization should be withdrawn from the jurisdiction of the Hudson's Bay Company."

2nd. "That the country incapable of colonization should remain within their jurisdiction."

He proposed that in the country remaining within their jurisdiction power should be reserved to Her Majesty's Government to make grants "for the purposes of mines and fisheries, but with due regard to the immunities and trade of the Company." No "immunities" were even suggested with respect to the country which was to be withdrawn for colonization. He proposed to ignore the charter, by declaring that the jurisdiction of the Company "should rest henceforth upon the basis of Statute." He quoted the Governor's letter above referred to, "as an expression of the willingness of the Company to accept in principle the arrangement" he proposed, and ended with the suggestion that, "as the Company had tendered concessions which may prove sufficient to meet the case," no decision seemed necessary as to the question of raising "a judicial issue with the view of ascertaining the legal rights of the Company." The propositions of Mr. Gladstone were only lost in the Committee by the casting vote of the chairman.

Twelve years have passed since these offers were made by the Company and accepted by a committee of Parliament. Every Colonial Secretary, from 1858 to the present moment, has attempted to carry out the recommendation of the Committee, with the assent of

the Company; but without success. Two Acts of the Imperial Parliament have been passed, with provisions to facilitate the arrangement, but are yet without fruit. Sir Edward Bulwer Lytton characterized the offers of the Company during his administration as "illusory," and declared that they "by no means met the exigencies of the case." He expressed his regret at a determination on their part which "retains the very difficulty in the way of speedy and amicable settlement which he had sought to remove," and stated that if Canada declined to resort to "legal proceedings" (which he had recommended) "it would be his duty to consider whether negotiations with the Company can be resumed or whether in the last resort Her Majesty's Government must take the matter into their own hands and proceed on their own account." (Mr. Merivale's letter to H. H. Berens, 9th March, 1859.) Sir Edward remained in office long enough to put an end to the Company's license of exclusive trade in British Columbia and the Indian territories, but not long enough to carry out his policy of "connecting the two sides of British North America without the obstacle interposed by a proprietary jurisdiction between them."

The Duke of Newcastle opened negotiations with the Company, in 1863–4 with much vigour. But after various proposals and counter-proposals including the "reconstruction" of the Company, he was obliged to treat their propositions as "inadmissible."

Mr. Cardwell, during his administration, could not accept their proposals "without considerable modifications."

The Duke of Buckingham, after many discussions with the representatives of the Company, regretted to perceive that their proposals "did not afford much prospect of an arrangement being come to;" and in the communication to which the letter of Sir Stafford Northcote is a reply, declared himself "unable to recommend the adoption" of the terms demanded by the Company.

Our notice of what, in Sir Stafford Northcote's opinion, constitutes a "cheerful" acceptance of the decision of Her Majesty's Government, would be incomplete, if we did not remind Earl Granville that the Company's "proper conditions" for the surrender of that portion of the North-Western Territories, for which they can show no title but such as may be derived from the possession of a few trading posts, established there within the last fifty years, rose from a question of "no importance at all" in 1857, or at most, of "less money than would be spent in a litigation on this subject," (House of Commons Report, Question 5834,) to the retention, in 1863, in fee simple, of *half* the land proposed to be surrended, with various other conditions, including a guarantee by the Governments of Canada and British Columbia of an annual profit on the Company's expenditures for improvements on their own property! In 1864 these conditions took the form of a demand, first, to be paid £1,000,000 sterling from sales of lands and mines, with large reservations "to be selected by them," etc.; and, secondly, to be paid £1,000,000 sterling in cash, with other terms and reservations favourable to the Company.

In 1868 these conditions for the surrender of territorial and governing rights over the *whole* territory remained at £1,000,000, as in the first proposition of 1864, with large reservations of land at "selected" points, specially exempted from taxation, and with full liberty to carry on their trade free from the export and import duties to which all other subjects of Her Majesty in that country would be exposed.

In 1869 these various proposals, which no Secretary of State could possibly entertain, have all been apparently merged in one grand proposition to sell out "the territory at once for a sum of money," in cash or bonds, the amount of which is not stated.

We content ourselves under this head with the observation, that whatever others may be able to see in all these transactions, we are utterly unable to discover either a cheerful acceptance of the decision of any government, or an honest disposition to fulfil the solemn pledges made to Parliament in 1857, on the faith of which the Company was unquestionably saved from judicial or legislative extinction.

Sir Stafford Northcote claims credit for the Company because they have "declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization." Our information is (and we can give Earl Granville names and dates, if the point is deemed of any importance) that the only "overtures" of the kind mentioned which the Company have received, were not merely "encouraged," but suggested and concocted by prominent mem-

bers of the Company, for the purpose of producing an impression on the Government, and with a view, not to colonization, but to *negotiation* and the stock market.

We are not sure that we understand the statement of Sir Stafford Northcote that the Company "have taken no step which would give rise to fresh complications or place any new difficulty in the way of the admission of their territory into the Confederation." The sale of land to private parties for colonization (assuming that *bona fide* offers have been received from such parties) could not give rise to much complication, except in the affairs of the Company. If Sir Stafford hints at the negotiations which were lately reported to be going on with certain American speculators in London for denationalizing and Americanizing the Company with a view to the "admission of their territory" into the United States, instead of the Confederation, we respectfully submit that while such a difficulty might indeed be "new," the proper person to solve it would be Her Majesty's Attorney-General with the aid of a court and jury of competent jurisdiction.

We do not understand that Earl Granville expects us to defend in detail the Duke of Buckingham's proposals, or to answer all the objections made to them by Sir Stafford Northcote. The Government of Canada, as we have already reminded his Lordship, neither suggested the Act of Parliament nor the terms of the negotiation, which the late Secretary of State for the Colonies attempted to carry out under its authority. The Canadian plan of dealing with the question of the North-Western Territory and Rupert's Land is set forth in the address of the Canadian Parliament to Her Most Gracious Majesty, and we do not feel at liberty, as representatives, to suggest any other mode, until we are informed by Her Majesty's Government that the one proposed is deemed impracticable.

Sir Stafford Northcote's suggestion that "the payment of a sum of money" for the purchase of the territory would conduce to a more satisfactory result, is, we believe, the point upon which Earl Granville specially desires to have our views. Assuming that by "territory" he means the *whole* territory to which the Company lay claim, and that they are to continue as a trading corporation, retaining their posts, and allotments of land in their neighbourhood, as he states was agreed upon by the Duke of Buckingham and Lord Kimberley, we have to observe:—

1. This proposition involves an abandonment of the *principle* which two Secretaries of State (and it must be presumed, two successive administrations), declared, after much consideration, and in view of the transactions of 1857, was properly and justly applicable to this case, viz.: That the compensation should be derived from the future revenue of the territory itself, and payable only as it came into the hands of Government. This *principle* was also accepted by the Company in their communication of 13th April, 1864.

2. On the other hand, the principle of ascertaining and fixing a money value upon the territoral rights of the Company "in the British territory east of the Rocky Mountains and north of the American and Canadian lines," and of extinguishing those rights by a payment "at once," was suggested, in 1865, by a delegation from the Canadian Government of that day, and assented to by Mr. Cardwell, then Secretary of State for the Colonies, and his colleagues.

If the latter principle and mode of settlement is now to be adopted, it is obvious that the first question is, What is the nature of these "rights" and what territories do they affect? and the second, What are the rights, separated from the duties and burdens attached to them by the Charter, fairly worth?

We shall not attempt to answer these questions fully in the present communication, but we venture to submit for Earl Granville's consideration a few facts and inferences, which cannot, we believe, be disputed, and which are essential elements in any calculation which may be attempted on the basis of a money purchase.

1. The Charter of Charles II. (and for the present we raise no question as to its validity) could not and did not grant to the Hudson's Bay Company any territory in America which was not then (1670) subject to the Crown of England.

2. The Charter expressly excluded all lands, etc., then "possessed by the subjects of any other Christian prince or state."

3. By the treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France the sovereignty of Acadia, New France and Canada, generally, and without limits.

4. "La Nouvelle France" was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove.

5. At the treaty of Ryswick (1697), twenty-seven years after the date of the Charter, the right of the French to "places situated in Hudson's Bay" was distinctly admitted; and although commissioners were appointed (but never came to an agreement) to "examine and determine the pretensions which either of the said kings hath to the places situate in Hudson's Bay," and with "authority for settling the limits and confines of the lands to be restored on either side," the places taken from the English (*i.e.* from the Hudson's Bay Company) by the French previous to the war, and "retaken by the English during this war, shall be left to the French by virtue of the foregoing (the 7th) article." In other words, the forts and factories of the Hudson's Bay Company, established in Hudson's Bay under pretence of their Charter and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored, by the Treaty of Ryswick, to the French, and not to the Company.

6. By the Treaty of Utrecht, 1714, "the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto," were finally ceded to Great Britain.

7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson's Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and "Fertile Belt," from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their Charter. The license to trade in the Indian territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

10. The country which, in view of these facts, must be excluded from the operation of the Charter, includes all the lands fit for cultivation and settlement in that part of British America.

It will be for Earl Granville to consider whether this Company is entitled to demand any payment whatever for surrendering to the Crown that which already belongs to it. We confess our utter inability, upon any principle of law, or justice, or public policy, with which we are acquainted, to estimate the amount which ought to be paid under such circumstances. The only basis of computation we can discover, applicable to such a case, is the *cost* of the legal proceedings necessary, if any be necessary, to recover possession. A person has taken possession of a part of your domain under the pretence that it is included in a deed which you gave him for some adjoining property before you purchased the domain. You want to get rid of him, but will be compelled to bring an action. He is artful, stubborn, wealthy and influential. He will be able to worry you with a tedious litigation. How many acres will you allow him to "reserve," and how much will you pay to save yourself the cost and trouble of a law suit? Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case. We recommend this mode of computing the amount of the payment to be made for the surrender of the North-West Territory, as distinguished from Rupert's Land, with all the more confidence, because it has already been suggested by one of the ablest and most trusted of the representatives of the Company. (*Vide* evidence of Right Honourable E. Ellice, House of Commons Report, 1857, question 5834.)

With respect to Rupert's Land, or the "lands and territories," "upon the coasts and confines of the seas, bays," etc., "that lie within the entrance of the straits commonly called Hudson's Straits," "not possessed by the subjects of any other Christian prince or state," a different rule, we admit, may be held to apply. Giving to the words of grant the widest construction, territorially, that could possibly be admitted by any judicial body

with the facts of the case in evidence before it, or, giving to these words the construction which the Company themselves applied for a hundred years from the date of their Charter, the "rights" they propose to sell are of little commercial value. No revenue, we feel assured, will ever be derived from them. The fur trade is the only industry the country offers as a source of profit, and this, if we rightly understand Sir Stafford Northcote's suggestion, the Company wish to retain.

It has never been alleged, even by the most sanguine advocates of the new theory of the Company respecting land sales, that any revenue can be derived from that source within the limits which we have assigned to Rupert's Land. The cost of government, there, inconsiderable though it may be, will always exceed any possible revenue. We are thus led to the same conclusion as in the case of the territory claimed, but not owned, by the Company, viz., that what they propose to sell has no pecuniary or commercial value. They are there, however, by at least a show of right. Being there, they obstruct the progress of Imperial and Colonial policy, and put in jeopardy the sovereign rights of the Crown over one-third (and as some think, even a larger portion) of the North American Continent. "What is it worth to have this obstruction *quietly* removed?" This is perhaps, the true question; but the answer, we submit, belongs rather to Her Majesty's Government—which has the power, in the event of resistance, to remove the evil by a summary process—than to those who are little more than spectators of the negotiation.

Earl Granville is aware that several attempts have been made since 1857 to arrive at a definite agreement on the subject of compensation. The suggestions and proposals on each side, together with the actual market value of the Company's stock at different periods, supply data which his Lordship may deem of importance; and we therefore respectfully submit our views as to the conclusions which may be deduced from them.

The first attempt of the Imperial Government to estimate, and express in pounds sterling, the compensation which it would be reasonable to offer to the Company, was made by the Duke of Newcastle in 1864. The greatest sum which, after "very grave consideration," his Grace felt himself able to propose for the surrender of the country west of Lake Winnipeg was £250,000. But the payment was subject to the following conditions:—

1. £150,000 was to be derived from the sale of lands by the Government within the territory. The payment was to be made at the rate of 1*s.* per acre sold, but to be entirely dependent on the Government receipts.

2. Payments were to cease whenever they reached £150,000; and absolutely at the end of fifty years.

3. The company was to be paid one-fourth of the sum received by the Government for export duty on gold or for mining licenses or leases for gold-mining in the territory, for fifty years, or until the aggregate amounted to £100,000.

4. The payment of any part of the £250,000 was contingent on the ability of the Company to place Her Majesty's Government in possession of an "indisputable title" to the territory ceded by them as against the claims of Canada.

The last condition was objected to by the Company on the ground that they could only give such title as they had, which they contended "must be taken for better for worse." The Duke of Newcastle renewed his offer, modifying the last condition into a stipulation that, in case it should be found advisable, the territory eastward of a line passing through Lake Winnipeg and Lake of the Woods, might be ceded or annexed to Canada, in which case nothing would be payable to the Company in respect of *that* territory.

The present value in cash of such an offer, subject to the conditions and contingencies specified, would be very difficult to ascertain. The revenue from export duty on gold and for licenses would probably be *nil.* The revenue from land sales, if the cost of surveys, management, and necessary roads were deducted, would be *nil* also. It is very doubtful whether, if these deductions be made, the revenue from land sales in the Provinces of Canada, from the cession in 1763 to the present time, would show a surplus.

Sir Stafford Northcote quotes the price of land in Minnesota, and thence infers the value of lands in the Red River and Saskatchewan districts, which lie from five to ten degrees further north and are still in the possession of the wild Indians of the plain. But

we think it will be found that the lands in Minnesota, which sell for "one pound per acre," are either private lands in the neighbourhood of towns, or the property of railway companies, on or near which millions of dollars have been expended to make them saleable. They are certainly not *public* lands unimproved by public expenditure. Sir Stafford ought to have mentioned at the same time a fact, which we believe is known to every emigrant who leaves the British Isles for America, that, in the Western States of the Union, and in the Provinces of Canada, wild lands are now given to settlers as "free grants," and we may add, this policy is more likely to be extended than reversed. To talk of the *value* of public lands as a source of revenue, distant from one to two thousand miles from available markets, and without roads or navigable waters by which to approach them, is to contradict all experience, or to assume that the cost of surveys and management, and of canals, roads, and other improvements for their development and settlement, will be supplied by those who do not own them for the benefit of those who do.

But in order to arrive at some result that can be expressed in figures, we will assume that the sum ascertained by the Duke of Newcastle to be a sufficient "compensation" would under his proposition, have been paid within fifty years, and at an average rate per annum. We thus give the Company the benefit of all the doubts in the case, and reduce the question to a simple problem in arithmetic: What is the present value of an annuity of £5,000 per annum for fifty years?

That value, we submit, is the highest amount in cash which can be claimed as an equivalent for the offer made to the Company in 1864, by his Grace the Duke of Newcastle.

The next offer of the Imperial Government which mentions a specific sum, is that made by his Grace the Duke of Buckingham and Chandos, on the 1st December last. It differs from the previous offer in several important particulars.

1. It embraces the *whole* of the territory claimed by the Company.

2. It proposes to allow the Company to retain their "posts" and certain allotments of land in their vicinity, with a small reservation in each township as it is surveyed.

3. It proposes to allow the Company one quarter of the receipts from land (free grants being treated as sales at 1*s.* per acre), and one quarter of the sum received by Government as an export duty for gold and silver.

4. It limits the amount to be received under these heads conjointly at £1,000,000 sterling.

The other stipulations are unimportant for the purpose of ascertaining the cash equivalent of the proposition.

It is evident that the "unknown quantities" in this equation are as difficult to find as in the first. We know the *total* sum to be paid, and the *proportion* of the receipts from lands and mines applicable for its payment; but we do not know the average annual sum likely to be realized from their sale. The minimum price is fixed at 1*s.* per acre, and it is doubtful, if under the proposed arrangement, the price would ever be found to exceed that sum. There is one term still to be ascertaind—the average *number* of acres per annum likely to be sold and granted. A crude guess is all that the case admits of. If we take Upper Canada, possessing many advantages for early and rapid settlement of which, unfortunately, the remote territories of the North-West are deprived, we find that from its erection into a separate province, down to 1868, about twenty-two millions of acres had been disposed of by sale and grant, or an average of about 286,000 acres per annum.

Assuming that the same rate of sale, etc., is maintained in the North-West Terrritories (which all the old Hudson's Bay authorities who know the country, would pronounce a bold assumption), we have reduced the question to a simple reference to the annuity tables as before, viz., What is the present value of an annuity of £3,575 per annum for 280* years?

We have omitted from the last term the one-fourth of the Government receipts from gold and silver, for two reasons. 1st, It has not been shown that there are any gold or

* [*Sic.* in the original print; but the figure is an evident error in copying or printing. The figure should no doubt be 50.—G. E. L.]

silver mines in the territory that will pay for working. 2nd, All the attempts heretofore made to obtain a revenue from such sources, in Canada, have failed, and public opinion has forced the local Governments to adopt the policy of what may be called "free mining," or cheap lands for the miners, and abolition of royalties and imposts, except to meet the cost of preserving the peace, and of surveys and necessary supervision.

There is another proposition on the Government side which bears on the question of "compensation." It results from the agreement between the representatives of the Government of Canada and Her Majesty's Government in 1865, and containing fewer elements of uncertainty than propositions which involve questions of Government policy, emigration, land sales, etc., it can be reduced to a cash value with greater exactitude.

Mr. Cardwell describes the agreement as follows:—"On the fourth point the subject of the North-Western Territory, the Canadian Ministers desired that that territory should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised in Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal—undertaking, that if the negotiation should be successful, we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement, and to guarantee the amount."

The Canadian delegates reported on the subject with a little more detail. "We accordingly proposed to the Imperial Ministers that the whole British territory east of the Rocky Mountains and north of the American or Canadian lines should be made over to Canada, subject to such rights as the Hudson's Bay Company might be able to establish, and that the compensation to that Company (if any were found to be due) should be met by a loan guaranteed by Great Britain. The Imperial Government consented to this, and a careful investigation of the case satisfies us that the compensation to the Hudson's Bay Company cannot, under any circumstances, be onerous. It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets, in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere, not included in our arrangement, a very large claim against the United States Government under the Oregon treaty; and ships, goods, pelts, and business premises in England and Canada, valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at."

The principle which this agreement between the two Governments recognizes as applicable to the case, appears to be compensation in money for the ascertained rights of the Company, after deducting the value of the property retained by them. The words "if any," and "if any were found to be due" import that, in the opinion of both parties, it was possible if not probable that, after making the deductions, no compensation would be "due."

The basis of the calculation which seems to have been made, or agreed upon, is very simple. The old Hudson's Bay Company had recently sold all the rights and property of the Company of every description for the sum of £1,500,000. An inventory, agreed to by both sellers and purchasers, set down the assets, exclusive of "Territorial Rights," as follows:—

1. The assets (exclusive of Nos. 2 and 3) of the Hudson's Bay Company, recently and specially valued by competent valuers, at	£1,023,569
2. The landed territory (not valued)	
3. A cash balance of	£370,000
	£1,393,569

On the face of their own statement, £1,500,000, *less* the above sum, or £106,431, was the amount which the new purchasers actually paid for the "landed territory." Under

the agreement of 1865 this seems to be the highest sum which Mr. Cardwell and the representatives of the Canadian Government thought could in any event be demanded by the Company, as indemnity or compensation for the surrender of the rights they "would be able to establish."

We have thus attempted to convert into their equivalents in cash the two offers made to the Company since 1857 by the Imperial Government, and to ascertain the amonnt of the indemnity contemplated by Mr. Cardwell and the Canadian delegates in the arrangements of 1865. To arrive at any result, we have had to assume figures which, according to our experience, the facts of a new country will be more likely to reduce than to increase. We have also omitted conditions either implied or expressed in the proposals of 1864 and 1868, which we believe would have imposed considerable expense upon the Company.

There is another mode of estimating the amount to be paid, on the principle of compensating for actual loss only, which remains to be considered.

The stock of the Company has for some time been quoted at an average of 13½. The capital is, nominally, £2,000,000, and the shares £20,—the value of the stock, therefore, in cash, assuming that the whole of it could be sold at the market rate, is £1,350,000, or £43,569 *less* than the value, according to their own estimate, in 1863, of the Company's assets, *exclusive* of the "landed territory." The money obtained from the public for shares, beyond the £1,500,000 paid to the old shareholders, will no doubt be amply sufficient to make good any deficiency in the valuation of 1863.

From a consideration of these data we submit, that, if the validity of the Charter is not now to be questioned; if the territorial extent of the country affected by it is not to be defined; if the claim of Canada to include, within her boundaries, a large portion, if not the whole, of the country occupied by the French at the time of the cession in 1763, is not to be investigated, and finally determined; if the admitted incapacity and the notorious neglect of the Company to perform the duties of government (which were part of the consideration for the *rights* conceded by the Charter), are not to be taken as sufficient, on public grounds, to justify cancellation and re-entry by the Crown,—then the very highest indemnity which ought to be paid, in cash, for a surrender of the territorial claims of the Company, with the reservations and other privileges offered by his Grace the Duke of Buckingham and Chandos, is the sum indicated by the foregoing computations.

We must, in conclusion, express to Earl Granville our strong conviction that no *money* offer, which either the Imperial or the Canadian Government would deem reasonable, will be accepted by the Company, and that, to delay the organization of constitutional Government in the North-West Territory until the Hudson's Bay Company consent to reasonable terms of surrender, is to hinder the success of Confederation in British America, and to imperil the interests and authority of the British Crown in the territories now occupied by the Company.

We therefore respectfully submit for Earl Granville's consideration, whether it is not expedient that the Address of the Canadian Parliament be at once acted upon, under the authority of the Imperial Act of 1867.

But, if his Lordship should see any sufficient legal or other objection to that course, then we ask, on behalf of the Dominion Government, for the immediate transfer to that Government of the "North-West Territory," or all that part of British North America, from Canada on the east, to British Columbia, Alaska, and the Arctic Ocean, on the west and north, not heretofore validly granted to and now held by "The Governor and Company of Adventurers of England trading into Hudson's Bay," by virtue of a Charter of King Charles II., issued about the year 1670.

We have the honour to be, Sir,
Your obedient servants,

Geo. Et. Cartier.
Wm. McDougall.

Sir Frederic Rogers, Bart.,
etc., etc., etc.,
Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
22nd February, 1869.

SIR,—I am directed by Earl Granville to enclose, for the information of the Directors of the Hudson's Bay Company, the copy of a letter which his Lordship has received from Sir G. Cartier and Mr. McDougall. As the greater part of that letter relates to matters on which the Company and the colony cannot be expected to agree, and on which Her Majesty's Government has no authority to decide their differences, Lord Granville has felt some doubt whether the settlement of the question would be advanced by forwarding this letter. He considers it, however, necessary to do so; and in doing so, to explain clearly the position which he considers himself to occupy.

It appears that his Lordship's predecessor entertained the hope that he would be able to arrange the terms of a compromise, under which, with consent of both parties, the sovereignty of the Hudson's Bay Company's Territory would be transferred to the Dominion of Canada.

With this view his Grace made to the Company a proposal, respecting which Sir G. Cartier and Mr. McDougall write as follows:—

"The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st December last, were not made at our suggestion, although we were disposed to think (and so informed his Grace) that if the Company accepted them the Canadian Parliament might be persuaded to undertake the duties of legislation and government in the territories on the conditions specified."

Your letter of the 13th inst. may be considered as a rejection of those proposals, and as thus terminating the negotiations instituted by the Duke of Buckingham and Chandos. But in your letter you propose that the matter should be settled by the immediate payment of a fixed sum of money, or by the delivery of bonds, and you express yourself prepared to enter into further communication with Lord Granville on this subject.

It is of course obvious that this negotiation for the purchase of the Hudson's Bay Company's territory is really between the seller and the buyer, the Company and the colony, and Lord Granville is of opinion that if the negotiation is revived on this or any other basis, Her Majesty's Government, can, at present, do no good by assuming to frame or suggest terms of accommodation; but can merely offer to act as a channel of communication between these two real parties to the transaction, using its best endeavours to remove any difficulties not inherent in the nature of the case.

Acting on this view, Lord Granville communicated to Sir G. Cartier and Mr. McDougall a copy of your letter of the 13th. The enclosure to this letter is the answer which he has received.

The material sentences, for the present purpose, are those with which the letter concludes.

You will observe that the representatives of the colony state the principles on which they consider the cost of the territory should be calculated, indicating the opinion that the sum of £106,431 is the highest which could on any hypothesis properly be demanded by the Company; and express their strong conviction that no money offer, which either the Imperial or Canadian Government would deem reasonable would be accepted by the Company. Assuming this to be the case, they ask on the part of the Dominion Government either the immediate transfer of the sovereignty of the whole terrritory, subject to the rights of the Company, or a transfer of the sovereignty and property of all the territory not heretofore validly granted to, and now held by the Company under its Charter.

Under these circumstances, Earl Granville directs me to communicate to you the enclosed letter, which taken in connection with previous correspondence, appears to him to leave little present hope of bringing matters to a settlement by way of compensation. If the Directors of the Company should still think any such arrangement possible, his Lordship will of course be prepared to transmit to the Canadian representatives any

*Sess. Papers, Can., 1869, No. 25.

modified proposal on the part of the Company. Failing this, he thinks it proper to invite from the Directors, not any argument respecting the true nature and extent of the Company's claims from which, as not being before a court of law, he could anticipate no result, but a statement of any objections they may have, whether of principle or detail to the two counter proposals now made by Sir G. Cartier and Mr. McDougall on behalf of the Canadian Dominion.

And it might not be immaterial to add what course the Company would propose to take, for securing that life and property are adequately protected, and international obligations duly performed in their territory, so long as they remain responsible for its government.

I am, Sir, your most obedient Servant,

FREDERIC ROGERS.

The Right Honourable Sir Stafford Northcote, M.P.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON'S BAY HOUSE,
LONDON, February 26th, 1869.

SIR,—I have the honour to acknowledge your letter of the 22nd inst., transmitting, by Earl Granville's direction, a copy of a letter addressed to his Lordship by Sir George Cartier and Mr. McDougall, on the subject of my letter to yourself, dated the 13th ultimo.

The Committee of the Hudson's Bay Company understand from your letter, that it is not Earl Granville's wish that they should enter into a discussion of the communication from the Canadian delegates, and they therefore refrain from making any comments upon its tone or criticising and correcting its assertions. If there are any of those assertions to which Earl Granville himself attaches weight, the Committee will gladly, on their being pointed out to them, offer such observations upon them as may appear to be necessary.

As regards the manner in which the Canadian delegates treat the suggestions contained in my letter of the 13th ultimo,—that the Canadian Government should complete the purchase of the Company's territory at once, by the payment of a sum of money or by the delivery of bonds,—the Committee desire me to observe that they might have had some difficulty in gathering, from the terms in which the delegates express themselves, whether they were or were not prepared to entertain that suggestion, and to open a negotiation with this Company. But as Earl Granville, who has had personal communication with the delegates, is of opinion that their letter, taken in connection with previous correspondence, leaves little present hope of bringing matters to a settlement by way of compensation, the Committee are forced to adopt the conclusion that it is intended as a virtual refusal on the part of the delegates to entertain the question in a serious spirit.

Should Earl Granville at any time come to the conclusion that it is desirable that the Committee should renew the offer of fully communicating with him on the subject of a money sale which they made in my letter of January 13th, they will hold themselves prepared to do so. For the present, and in accordance with what they gather to be his Lordship's views, they consider this matter at an end.

It becomes my duty, then, to answer Earl Granville's questions, (1) Whether the Committee have any objections, either of principle or of detail, to make to the "counter proposals" of Sir G. Cartier and Mr. McDougall, and (2) What course the Company would propose to take for securing that life and property are adequately protected, and international obligations duly performed in their territory, so long as they remain responsible for its government.

* Sess. Papers, Can., 1869, No. 25.

With regard to the first of the two counter-proposals, viz., that the sovereignty of the whole of the territory in question should be immediately transferred to the Dominion Government "subject to the rights of the Company," the Committee desire to ask whether it is intended that the rights of the Company should be ascertained and defined before the transfer takes place, or after it. If the former be Earl Granville's intention, the Committee have no kind of objection to offer to the proposal; but if it be meant that the transfer should take place first, and that the rights of the Company should then be made the subject of litigation in Canada, with a right of appeal to the courts of this country, I must remark that such a course is likely to lead to much inconvenience, expense and annoyance to all parties concerned, as well as to prove detrimental to the interests of the settlement itself by the prolongation of an irritating and disturbing controversy. As regards the injustice to this Company involved in such a proposal, I beg leave to refer Earl Granville to Sir E. Head's letter of the 25th January, 1868, to the Duke of Buckingham and Chandos, in which a similar proposal is very ably discussed, and to which, and to the extracts from speeches delivered in the Canadian Parliament which it encloses, the Committee desire to invite Earl Granville's particular attention.

The second counter-proposal is for a transfer to the Dominion Government of both the sovereignty and the property of "all the territory not heretofore validly granted to, and now properly held by the Company under its Charter." Upon this proposal also the Committee desire respectfully to ask whether the limits of the territory so to be transferred are to be distinctly set out in the instrument of transfer, so that there may be no room for disputes as to the limits of the respective jurisdictions. Even with the utmost care in this respect, the Committee cannot but feel apprehensive that difficulties will arise in dealings with the Indians and with the various classes of hunters and traders frequenting those distant regions, if two different systems of administration are introduced into those portions of the extreme North-Western Territory which would be effected by the proposed transfer, especially as the great distance of that territory from Canada, and the difficulty of the communications, will render its administration by the Dominion Government very troublesome. Should, however, Her Majesty's Government decide on this measure, the Committee will do all in their power to arrive at a good understanding with the Dominion Government as to the details of the arrangements which should be made in the two portions of the now united territory, and to facilitate the establishment of a strong administrative system in both.

As regards any transfer of the sovereignty without a distinct definition of the limits to be assigned to it, and by virtue merely of vague general words, the Committee feel that they need not point to Earl Granville that such a step would not only be open to the objections which I have already mentioned in the case of the former counter-proposal, but to the further, and very serious one that it must lead to constant conflicts of authority and to frequent political embarrassments. The Company can hardly be expected to provide for the security of life and property, and the due performance of international obligations if their boundary is left unsettled, and their title to important parts of their territory unrecognized. It is probably unnecessary for me to pursue this argument at any length.

I have now to advert to the last question put by Earl Granville,—that relating to the course which the Company would propose to take for the government of their territory, so long as they remain responsible for it.

The Committee desire me, in the first place, to remind his Lordship that they have no authority to give a pledge on the part of the shareholders of the Company, and that they can only undertake to submit certain proposals to them, and to use their own influence to secure their adoption. Subject to this reservation, the Committee are prepared to enter at once into communication with Earl Granville, as to the measures which should be adopted for the purpose to which he adverts. As his Lordship is aware, a resolution was agreed to by this Committee, as long ago as in August, 1863, to the effects that in the opinion of the Directors it was expedient that the authority, executive and judicial, over Red River settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown, and exercising it in the name of Her Majesty. In adopting this resolution, the Committee intended to indicate their

desire for the establishment of a Crown colony in this portion of their territory. They still believe that this would be the most satisfactory plan that could be pursued, and they are prepared to discuss it with Her Majesty's Government, if they are encouraged to do so.

I am to state that the Committee would be willing either to advise the surrender of such proportion of the Company's proprietary rights as might be found to be a fair equivalent for the charge which the establishment of a Crown colony would throw upon the Imperial Exchequer, or to recommend the Company, retaining its proprietary rights, to take upon itself the whole of the pecuniary burden. The Committee are satisfied that a territory, which in the present undeveloped state of its communications supports a trade of the annual value of more than £400,000, and which possesses a large amount of highly fertile soil requiring no great expenditure for its clearance and cultivation, is perfectly capable of supporting the expense of any government that it may be required to maintain; and they have little doubt that if the state of the case were fairly laid before the shareholders, and if the moral support of the Imperial Government were distinctly assured to them, the necessary funds would readily be forthcoming.

Of course, if Her Majesty's Government should be of opinion that the great objects in view could be equally well attained by the exercise of the powers actually possessed by, or which might be granted to the Company, and should consider that it would be preferable to adopt this method of government rather than to erect the territory into a Crown colony, the Committee would at once fall in with such a suggestion, and would request Earl Granville to state to them what establishment would, in the opinio nof Her Majesty's Government, be sufficient to meet the necessities of the case.

It can hardly be necessary for me to add that, in the event of such an arrangement being made, the Company would rely upon the cordial co-operation of the Government in submitting any needful measure to Parliament, and in protecting the settlement from any trespass or interference on the part of Canada.

In conclusion I am to observe that it is on many accounts important that the Directors of this Company should soon communicate to the shareholders the progress of this negotiation, and should lay the correspondence before them. They trust that Earl Granville will have no objection to their doing so.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

Sir Frederic Rogers, Bart.,
Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
9th March, 1869.

SIR,—Earl Granville has had under review the correspondence which has passed respecting the proposed transfer to Canada of the jurisdiction and territorial rights of the Hudson's Bay Company in North America.

It is, in Lord Granville's opinion, of very great importance that this question should be settled on a permanent footing, and with little delay. He does not disguise the interest which Her Majesty's Government have in this settlement. It is not creditable to this country that any inhabited part of Her Majesty's dominions should be without a recognized Government capable of enforcing the law, and responsible to neighbouring countries for the performance of international obligations. The toleration of such a state of things in parts of the Hudson's Bay Territory is unjust to the inhabitants of that territory, and is not without danger to the peaceful relations between this country

* Sess. Papers, Can., 1869, No. 25.

and the United States ; and this danger and injustice are likely to increase in proportion as the mining and agricultural capabilities of what is called the "Fertile Belt" begin to attract settlers from the east and south.

To Canada the settlement of the question is not less important, as removing a cause of irritation between it and its neighbours, and even with the mother country itself ; as destroying an obstacle to that which has been looked upon as the natural growth of the Dominion ; as likely to open an indefinite prospect of employment to Canadian labour and enterprise ; and lastly, as enlarging the inducements which Canada is able to offer to the British immigrant. It is no small matter that it would enable Her Majesty's Government at once to annex to the Dominion the whole of British North America proper, except the colony of British Columbia.

To the Hudson's Bay Company it may almost be said to be necessary.

At present the very foundations of the Company's title are not undisputed. The boundaries to its territory are open to questions of which it is impossible to ignore the importance. Its legal rights, whatever these may by, are liable to be invaded without law by a mass of Canadian and American settlers, whose occupation of the country on any terms they will be little able to resist ; while it can hardly be alleged that either the terms of the charter, or their internal constitution, are such as to qualify them under all these disadvantages for maintaining order and performing the internal and external duties of government.

The prejudicial effect that all those uncertainties must have on the value of the Company's property is but too evident.

The interests of all parties thus evidently pointing towards an immediate and definite adjustment, Lord Granville has been most unwilling to abandon the hope of bringing it about by way of amicable compromise. He is fully alive to the difficulties of such a compromise. He does not conceal from himself that the estimate which the Company form of the nature and value of their rights is widely different from that which is formed by the gentlemen who represent Canada ; nor can he undertake to express any opinion whatever as to the relative correctness of those estimates. Indeed, it would be impossible to do so without knowing to what extent the claims of the Company would be supported by the judgment of a court of law.

But after repeated communications with both parties, his Lordship is convinced that he will be serving the interests of the Dominion, of the Company, and of this country, by laying before the Canadian representatives and the directors of the Company a distinct proposal, which, as it appears to be, it is for the interest of both parties to accept, and in support of which Her Majesty's Government would be prepared to use all the influence which they could legitimately exercise.

If the proposal is really an impartial one, Lord Granville cannot expect that it will be otherwise than acceptable to both of the parties concerned. But he is not without hope that both may find, on consideration, that if it does not give them all that they conceive to be their due, it secures to them what is politically or commercially necessary, and places them at once in a position of greater advantage with reference to their peculiar objects than that which they at present occupy.

The terms which his Lordship now proposes are as follows :—

1. The Hudson's Bay Company to surrender to Her Majesty all the rights of government, property, etc., in Rupert's Land, which are specified in the 31 and 32 Vic., c. 105, sec. 4 ; and also all similar rights in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia.

2. Canada is to pay the Company £300,000 when Rupert's Land is transferred to the Dominion of Canada.

3. The Company may, within twelve months of the surrender, select a block of land adjoining each of its stations, within the limits specified in Article 1.

4. The size of the blocks is not to exceed —— acres in the Red River Territory, nor 3,000 acres beyond that territory, and the aggregate extent of the blocks is not to exceed 50,000 acres.

5. So far as the configuration of the country admits, the blocks are to be in the shape of parallelograms, of which the length is not more than double the breadth

6. The Hudson's Bay Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out: the blocks so granted to be determined by lot, and the Hudson's Bay Company to pay a ratable share of the survey expenses, not exceeding —— an acre.

7. For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

8. All titles to land up to the 8th of March, 1869, conferred by the Company, are to be confirmed.

9. The Company is to be at liberty to carry on its trade without hindrance, in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by them previous to the surrender.

10. Canada is to take over the materials of the electric telegraph at cost price, such price including transport, but not including interest for money, and subject to a deduction for ascertained deteriorations.

11. The Company's claim to land under agreement of Messrs. Vankoughnet and Hopkins to be withdrawn.

12. The details of this arrangement, including the filling up the blanks in articles 4 and 6, to be settled at once by mutual agreement.

It is due, both to the representatives of Canada and to the Company, to add—that these terms are not intended by Lord Granville as the basis of further negotiation; but a final effort to effect that amicable accommodation of which he has almost despaired, but which he believes will be for the ultimate interest of all parties.

If this be rejected either on behalf of the Dominion or the Company, his Lordship considers that his next step must be to procure an authoritative decision as to the rights of the Crown and the Company, and with this object he will recommend Her Majesty to refer their rights for examination to the Judicial Committee of the Privy Council, whose decision will form a basis for any future legislation or executive action which Her Majesty's Government may find necessary.

Whatever may be the result of this proposal, his Lordship desires to express his sense of the openness and courtesy which he has experienced throughout these negotiations, both from the representatives of Canada and from the Governor and Deputy-Governor of the Company, and the patience with which they have entertained proposals which, from their point of view, must no doubt have appeared inadequate.

Lord Granville is aware that a proposal of this kind will require consideration; but he hopes that you will lose no time beyond what is necessary in acquainting him with your decision.

I am, Sir,
Your most obedient servant,
FREDERIC ROGERS.

Sir Stafford Northcote, Bart., etc.

THE UNDER-SECRETARY TO THE CANADIAN DELEGATES.*

DOWNING STREET,
9th March, 1869.

GENTLEMEN,—Lord Granville transmitted to the Governor of the Hudson's Bay Company a copy of your letter of 8th February, and I enclose, by his Lordship's direction, a copy of the answer which he has received.

The conclusion to which he has been led, after a careful consideration both of the correspondence which has passed and of the various representations made orally to him

* Sess. Papers, Can., 1869, No. 25.

by yourselves and by the Governor and Deputy-Governor of the Company, are embodied in the enclosed letter, which he has directed me to address to Sir S. Northcote, and which you will be good enough to consider as conveying to yourselves also the views of Her Majesty's Government. His Lordship is confident that you will give it your earliest attention.

His Lordship desires me to add that, in case the terms suggested in this letter should be accepted by the parties concerned, Her Majesty's Government would be prepared to fulfil the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, and to propose to Parliament that the Imperial guarantee should be given to a loan of £300,000, the sum which is proposed to be paid over by Canada to the Company on the transfer of the Company's rights. As this is a matter in which the Company has no interest, it is not adverted to in my letter to Sir Stafford Northcote.

I am, Gentlemen,
Your most obedient servant,

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.,
W. McDougall, Esq.

RESOLUTIONS OF THE GOVERNOR AND COMMITTEE OF THE HUDSON'S BAY COMPANY, PASSED MARCH 12TH, 1869, TRANSMITED TO THE CANADIAN DELEGATES.*

Resolved, that the Committee will recommend the shareholders to accept the proposal of Lord Granville, if the Canadian Ministers will agree to the following modifications:—

1. That Canada will lay no export duty on furs.
2. That the 6th Article be modified so as to allow the Company to defer exercising their right of claiming their proportion of each township for not more than ten years after it is set out.
3. That no charges be made upon the Company for the expenses of survey.
4. That the proportion of land which they are to be allowed to claim be increased from one-twentieth to one-tenth.
5. That York and Moose Factories be retained as ports of entry.
6. That Canada undertakes to pay the £300 a year now paid to the Bishop of Rupert's Land, and other charges of a public character now borne by the Company.
7. That some provision be made for referring to arbitration any question which may arise out of the agreement.

THE CANADIAN DELEGATES TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

WESTMINSTER PALACE HOTEL,
LONDON, March 13th, 1869.

SIR,—We have the honour to acknowledge the receipt of a copy of certain resolutions adopted by the Governor and Committee of the Hudson's Bay Company, on the 12th inst., suggesting important modifications of the proposal of Lord Granville for the transfer of Rupert's Land to Canada.

We beg you will inform the Committee that, in our opinion, the proposal of Lord Granville is much more favourable to the Hudson's Bay Company than any previous proposal of the Imperial Government, and much more onerous to Canada than its Government and people have been led to expect. With great reluctance we have consented to recommend Lord Granville's proposal, if accepted by the Company *pure et simple*, but

*Sess. Papers, Can., 1869, No. 25.

not otherwise, to the favourable consideration of the Canadian Government. The modifications and additions proposed by the Committee are not, in our judgment, "details" within the purview of the 12th article of Lord Granville's proposal, but substantive and material changes affecting the very basis of the arrangement. We cannot, therefore, assent to them, or undertake to recommend their acceptance by the Canadian Government.

We have further to observe that, in making these demands upon us, the Committee assume that the changes they propose will be accepted, or approved by the Imperial Government. If we are correctly advised, the Committee are not warranted to make that assumption. In the letter of Sir Frederic Rogers communicating to us a copy of Lord Granville's proposal, we are assured that it conveys "the views of Her Majesty's Government;" and in the letter conveying these views to the Company it is stated that "these terms are not intended by Lord Granville as the basis of further negotiations." It follows, we think, that Lord Granville's proposal is to be regarded as the *ultimatum* of the Imperial Government, and must be accepted or rejected in its entirety. The Act 31 and 32 Victoria, Chapter 105 (which was not introduced at the instance, or passed in the interest of the Canadian Government), placed the negotiation of the terms of surrender by the Company to the Crown in the hands of Her Majesty's Imperial Government, where, until the Act is repealed, or the negotiation fails, we are of opinion it must remain.

We shall be glad to confer with you upon all questions of "detail," which by the terms of Lord Granville's proposal are left to be adjusted between the Canadian Government and the Hudson's Bay Company.

We have the honour to be, Sir,
Your very obedient servants,

GEO. ET. CARTIER.
WM. McDOUGALL.

Sir Stafford Northcote, M.P.,
etc., etc., etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE CANADIAN DELEGATES.*

HUDSON'S BAY HOUSE,
LONDON, March 16th, 1869.

GENTLEMEN,—I have the honour to acknowlege the receipt of your letter of yesterday's date, in reply to my letter to Sir George Cartier, in which I enclosed to you a copy of the resolutions adopted at the meeting of the Committee of the Hudson's Bay Company on the 12th instant.

It is unnecessary for me to enter into the question you raise, as to whether Earl Granville would or would not accept any modifications of the terms set forth in his Lordship's recent communication to this Committee, if they should be agreed to by this Committee on the one hand, and by yourselves on the other. While stating that he regarded these terms as not being intended as the basis of further negotiations, Lord Granville added that he left the details of the arrangement to be settled by mutual consent. The greater part of the resolutions transmitted to you in my letter of the 12th were resolutions intended to lead to a settlement of certain details, on which it will be necessary for the Committee to offer full explanation to the shareholders of the Company, if they decide on submitting Earl Granville's proposals to a general meeting.

If in your opinion any of them go further than this, the Committee will be ready to reconsider them, and to confer with you upon them.

---

* Sess. Papers, Can., 1869, No. 25.

As regards the resolution by which the Committee proposed that the amount of land to be left to the Company should be one-tenth, instead of one-twentieth, I am to state that the Committee have rescinded that resolution.

They will await a communication from you with regard to the other resolutions before coming to a conclusion as to the course they should adopt.

I am, Gentlemen,
Your obedient servant,

STAFFORD H. NORTHCOTE.

Sir Geo. E. Cartier, Bart., and
The Hon. Wm. McDougall, C.B.

THE CANADIAN DELEGATES TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

WESTMINSTER PALACE HOTEL,
March 18th, 1869.

SIR,—We have the honour to acknowledge your letter of the 16th inst., in which you inform us that the Committee of the Hudson's Bay Company has rescinded the Resolution adopted on the 12th inst. asking for *one-tenth* instead of *one-twentieth*, as proposed by Lord Granville, of the land which may be surveyed for settlement in the North-Western Territory. You further state that if the other resolutions transmitted to us go further than the "details of the arrangement," left by Lord Granville to be "settled by mutual consent," the Committee are ready to reconsider them.

With reference to the first resolution, "That Canada will lay no export duty on furs," we beg you will inform the Committee that it is not the policy or practice of the Canadian Government to resort to "export duties" as a source of revenue. We feel no hesitation in stating our belief that no such duties as the Committee wish to prohibit, will be levied, but it would obviously be improper for us to consent to any arrangement which would fetter the free action of the Canadian Parliament in respect to modifications of the tariff which the future exigencies of the country may render necessary.

2. The proposal to modify the 6th article so as to permit the Company to defer the exercise of the right of claiming their proportion of lands in any township for a period of ten years after survey, might, we think, be agreed to, on condition that they limit their claim to allotment from the lands which may be unsold, at the time they declare their intention to take their proportion in that township.

3. The demand to be relieved from the expenses of survey, which Lord Granville proposed the Company should bear, is not, we think, a "detail," within the meaning of the 12th article. But if it will remove the apprehension that charges under this stipulation may become excessive, we see no objection to a proviso, that the expense to the Company for the survey of the lands allotted to them shall in no case exceed eight cents per acre.

4. We have no doubt that York and Moose Factories will be retained as ports of entry if goods continue to be imported there. But if by the opening of interior communications trade should be diverted to other ports, it would not seem reasonable that the Government should be bound to maintain customs establishments at Hudson's Bay. The practice of the Canadian Government is to establish ports of entry wherever the interests of trade and commerce require them, and we do not, therefore, see that it is necessary or expedient to make any stipulation on the subject.

5. The demand that the salary of the Anglican Bishop of Rupert's Land should hereafter be charged upon the Canadian Treasury cannot, we think, be regarded as a "detail" within the 12th article of Lord Granville's proposal. The surrender of the rights and powers of government by the Company will necessarily involve the assump-

* Sess. Papers, Can., 1869, No. 25.

tion of "all charges of a public character" by the new Government. But an agreement to continue the charges *now* borne by the Company, *eo nomine*, would so far perpetuate a system which the transfer of the territory to Canada is intended to supersede.

6. The last proposal of the Committee is open to very serious objection. The surrender of the powers of government, and of territorial jurisdiction by the Company to the Crown, and the transfer of these powers to the Canadian Government, are acts of State, authorized by Imperial Statute, and will have all the force and permanence of fundamental law. The proposal to refer all questions which may arise under this law to some extra-constitutional tribunal is not warranted by the British North America Act, and would, we fear, if adopted, create confusion and embarrassment, and postpone indefinitely the establishment of a satisfactory government in Rupert's Land.

We must decline to admit, even by implication, that the judicial tribunals and the general and local authorities of the Dominion will fail to understand, or hesitate to respect and carry out, in good faith, all the terms and conditions of the proposed arrangement.

We have the honour to be, Sir,
Your obedient servants,

GEO. ET. CARTIER.
W. McDOUGALL.

Sir Stafford Northcote, M.P.,
etc., etc., etc.

DETAILS OF AGREEMENT BETWEEN THE DELEGATES OF THE GOVERNMENT OF THE DOMINION AND THE DIRECTORS OF THE HUDSON'S BAY COMPANY.*

1. It is understood that in surrendering to Her Majesty all the rights, etc., of the Company in any part of British North America not comprised in Rupert's Land, Canada, or British Columbia, the Company are to retain the posts they actually occupy in the North-West Territory.

2. It is understood that it will be a sufficient act of selection under Article III. that the Company should, within twelve months, name the number of acres which they will require adjoining each post. The actual survey to be proceeded with with all convenient speed.

3. It is understood that, in the Red River Settlement, the size of the blocks to be retained round Upper Fort Garry shall not exceed (ten) acres; and that round Lower Fort Garry shall not exceed (three hundred) acres.

4. It is understood that a list of the stations round which the Company will require blocks of land, with the size of the blocks they will require, shall be made out forthwith and communicated to the Canadian Ministers.

5. It is understood that Article V. shall be construed to mean that the blocks shall front the river or road by which means of access are provided, and shall be approximately in the form of parallelograms, of which the frontage shall not be more than half the depth.

6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

7. It is understood that the blank in Article VI. shall be filled up with eight cents (Canadian).

---

* Sess. Papers, Can., 1869, No. 25. [This appears to have been a provisional agreement entered into by the Directors only of the Company, and requiring confirmation by a general meeting of the shareholders. *See* letter of Sir Stafford Northcote of 16th March, 1869, *ante*, p. 174, with the letter of the Canadian delegates of 27th March, 1869, *post*, p. 177.—G. E. L.]

8. It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them.

Stafford H. Northcote,
G. E. Cartier,
W. McDougall.

March 22, 1869.

The Canadian Delegates to the Under-Secretary.*

Westminster Palace Hotel,
London, 27th March, 1869.

Sir,—Your letter of the 9th inst., enclosing a copy of proposals made by Lord Granville to the Hudson's Bay Company in your letter to Sir Stafford Northcote of the same date, has not been formally acknowledged by us, in consequence of a doubt, not yet removed, as to the acceptance of these proposals by the Company. We stated verbally to Lord Granville our objections to his proposals, but finally consented to recommend them to the Canadian Government, on condition that the Company first signified their acceptance of them. Sir Stafford Northcote has since opened communication with us directly, and proposed important modifications of Lord Granville's terms, to which we could not assent. In some points of detail we agreed that the terms might be varied or qualified, if such variation or qualification would be likely to make the arrangements, as a whole, more acceptable to the shareholders of the Company. We understand Sir Stafford Northcote has acquainted Lord Granville with the correspondence which has passed between us on the subject. The Company having, at the meeting on the 24th inst., postponed for a fortnight the question of accepting Lord Granville's proposals,† we regret that we are unable to await their decision. Our public duties require that we should immediately return to Canada. We have now the honour to repeat the request contained in our letter of the 8th February—viz., that immediate action may be taken by the Imperial Government upon the address of the Canadian Parliament of December, 1867, or that pending the negotiations for the transfer of Rupert's Land, the North-Western Territory, or all that part of British North America from Canada on the east, to British Columbia, Alaska and the Arctic Ocean on the west and north, not heretofore validly granted to, and now held by the Governor and Company of Adventurers of England trading into Hudson's Bay, may be immediately transferred to the Dominion of Canada, under the authority of the British North America Act, 1867.

G. E. Cartier,
W. McDougall.

Memorandum of a further Agreement between Sir George E. Cartier (one of the Canadian Delegates) and the Governor of the Hudson's Bay Company.*

Inasmuch as the northern branch of the Sakatchewan River is the northern boundary of the fertile belt, and therefore any land on the northern bank is not within the Territory of which the Company are to have one-twentieth part, it is understood that in forming the townships abutting on the northern bank, the Company shall be at liberty to

* Sess. Papers, Can., 1869, No. 25.

take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.

It is understood that in laying out any public roads, canals, etc., through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or has a frontage to any river or lake, they shall pay the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

George Et. Cartier,
Stafford H. Northcote.

London, 29th March, 1869.

The Under-Secretary to the Governor of the Hudson's Bay Company.*

Downing Street,
April 3rd, 1869.

I am directed by Earl Granville to enclose for your information a copy of a letter addressed by him to Sir G. Cartier and Mr. McDougall, and a letter which he has received from them in reply,† in which they intimate their acceptance of the terms proposed to you and them for the surrender of the territorial and other rights of the Hudson's Bay Company in Rupert's Land. I am to add that his Lordship has been informed in conversation by the above gentlemen that they believe the Canadian Government will agree to those terms, and have a confident hope that their Parliament will not reject them, and they added that in the event of the transfer taking place, the Hudson's Bay Company might rely upon the justice and good will of the Government and the Parliament of Canada.

F. Rogers.

The Governor of the Hudson's Bay Company to the Under-Secretary.‡

Hudson's Bay House,
London, 10th April, 1869.

Sir,—I have the honour to acquaint you, for the information of Earl Granville, that at a meeting of the Hudson's Bay Company held on the 9th inst., the following resolution was adopted by a large majority of the proprietors specially summoned to consider the proposal contained in your letter of the 9th ulto., for the surrender of the Company's territory, etc., to Her Majesty:—

That it is expedient to accede in the terms proposed in the communication above referred to, and to surrender to Her Majesty all this Company's territorial rights in Rupert's Land, and in any other part of British North America not comprised in Rupert's

---

*Sess. Papers, Can., 1869, No. 25.

†[It does not appear what these letters were.—G. E. L.]

‡Sess. Papers, Can., 1869, No. 25.

Land, Canada or British Columbia, and that the Governor and Committee be and they are hereby authorized to make such surrender on being assured that the terms have been agreed to by the Government and Parliament of Canada, provided that the acceptance of the terms by the Government and Parliament of Canada shall have been signified to them by Her Majesty's Secretary of State for the Colonies, within six months after the passing of this resolution, and that for that purpose the Governor and Committee concur in all such measures as may be found necessary for effecting such surrender, and for securing to the Company the rights and reservations to which, by the terms of the letter from Sir Frederic Rogers, the Company will be entitled.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

Sir F. Rogers, Baronet.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
10th April, 1869.

SIR,—The proprietors of the Hudson's Bay Company have considered at a special meeting the terms on which they have been invited to transfer their territorial rights to the Dominion of Canada, and I enclose the copy of a letter addressed to me by Sir Stafford Northcote, from which you will perceive that those terms have been acceded to.

You will observe that the Governor and Committee of the Company are authorized to concur in all such measures as may be found necessary for effecting this transfer, and for securing to the Company all the rights and reservations to which they will be entitled, provided that the acceptance of the terms by the Government and Parliament of Canada is duly signified to them within six months.

I trust that this acceptance may be confidently anticipated, and that by it an opening will be made for extending the benefits of a regular Government to those British subjects who at present occupy the Company's territory; for settling the tracts of fertile land which lie in the centre of the continent; and for the consolidation of British North America, under one Central Government.

On one point which has not been hitherto been touched upon, I am anxious to express to you the expectations of Her Majesty's Government. They believe that whatever may have been the policy of the Company, and the effect of their chartered rights upon the progress of settlement, the Indian tribes who form the existing population of this part of America have profited by the Company's rule.

They have been protected from some of the vices of civilization; they have been taught to some appreciable extent to respect the laws and rely on the justice of the white man; and they do not appear to have suffered from any causes of extinction beyond those which are inseparable from their habits and their climate. I am sure that your Government will not forget the care which is due to those who must soon be exposed to new dangers, and in the course of settlement be dispossessed of the lands which they are used to enjoy as their own, or be confined within unwontedly narrow limits.

This question had not escaped my notice while framing the proposals which I laid before the Canadian delegates and the Governor of the Hudson's Bay Company. I did not, however, then allude to it, because I felt the difficulty of insisting on any definite conditions without the possibility of foreseeing the circumstances under which those conditions would be applied, and because it appeared to me wiser and more expedient to rely on the sense of duty and responsibility belonging to the Government and people of such a country as Canada.

---

* Sess. Papers, Can., 1869, No. 25.

That Government I believe has never sought to evade its obligations to those whose uncertain rights and rude means of living are contracted by the advance of civilized men. I am sure that they will not do so in the present case, but that the old inhabitants of the country will be treated with such forethought and consideration as may preserve them from the dangers of the approaching change, and satisfy them of the friendly interest which their new governors feel in their welfare.

With the expression of this hope, I will close my despatch, merely repeating my sincere desire that the annexation of the great territory may be speedily accomplished, and may bring to the Dominion all the advantages which the statesmen of Canada not unreasonably anticipate.

I have, etc.,

GRANVILLE.

Governor the Right Honourable Sir John Young, Baronet,
G. C. B., etc., etc., etc.

REPORT OF THE CANADIAN DELEGATES.*

To His Excellency the Right Hon. Sir John Young, Bart., G.C.B., G.C.M.G., Governor-General of Canada.

May it Please Your Excellency,—

We have the honour to submit for your Excellency's consideration the following Report of our negotiations with Her Majesty's Imperial Government for the transfer to the Dominion of Canada of Rupert's Land and the North-Western Territory :—

Under the authority of an Order in Council of the 1st October, 1868, we were appointed a delegation to England to arrange the "terms for the acquisition by Canada of Rupert's Land," and by another Order in Council of the same date, we were authorized to arrange "for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land, as may be found practicable and expedient." We proceeded at once to execute the important mission confided to us, and on presenting ourselves at the Colonial Office, were invited by his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, to visit him at Stowe, for the purpose of discussing freely and fully the numerous and difficult questions which were involved in the transfer of these great territories to Canada. We found that his Grace had already made some progress in the preliminaries of a negotiation (under the Act 31 and 32 Vic., cap. 105) with the Hudson's Bay Company, for the surrender to Her Majesty of the territorial and political rights which they claimed in Rupert's Land. We objected very earnestly to some of the demands of the Company which were communicated to us by his Grace, but after much consideration and important modifications of the Company's demands, we agreed that if they would surrender the territory on the conditions which his Grace proposed, we would recommend the acceptance of these conditions by the Canadian Government.

The Duke of Buckingham's proposals will be found in the letter of Mr. Adderley, of the 1st December, 1868, addressed to the Governor of the Hudson's Bay Company.

Considerable delay in the negotiations was occasioned by the retirement from office of the Duke of Buckingham and his colleagues, and also by the resignation of Lord Kimberly, the then Governor of the Company.

On the 18th January, 1869, Earl Granville, who had acceded to office as Secretary of State for the Colonies, transmitted to us the reply of the Company, declining the proposals of the Duke of Buckingham. His Lordship subsequently requested us to communicate to him any observations which we might desire to offer upon this reply of the Company, and upon certain counter-proposals which it contained. We felt reluctant, as representatives

* Sess. Papers, Can., 1869, No. 25.

of Canada, to engage in a controversy with the Company concerning matters of fact, as well as questions of law and policy, while the negotiation with them was being carried on by the Imperial Government in its own name and of its own authority. But we did not feel at liberty to decline Lord Granville's request, and on the 8th of February stated at length our views upon the various points raised in the letter of Sir Stafford Northcote, the new Governor of the Company, in answer to the proposals of the Duke of Buckingham. We beg to refer your Excellency to the correspondence for full information as to the positions taken and the opinions expressed by us at this stage of the negotiation.

Lord Granville, being of opinion that the rejection by the Company of the proposals of his predecessor had terminated the negotiations instituted by him, submitted for our consideration proposals of his own, based on a different principle from that which had been laid down by the Duke of Buckingham.

We felt it our duty to state to his Lordship that these proposals would not be acceptable to the Canadian Government. They were subsequently modified, and in the form in which they appear in the letter of Sir Frederick Rogers, of the 9th March, were conditionally accepted by us, subject to the approval of your Excellency in Council.

Certain details were left by Lord Granville to be settled between the representatives of the Company and ourselves, which led to interviews and discussions with them, and to a correspondence, which is also submitted herewith.

During the progress of the negotiations, a formal complaint was made to the Colonial Secretary by the representatives of the Company against the Canadian Government, for undertaking the construction of a road between Lake of the Woods and the Red River Settlement without having first obtained the consent of the Company. The letter conveying this complaint was referred to us by Earl Granville for such explanations as we were able to offer. The correspondence on this subject is also respectfully submitted.

Your Excellency is aware that since our return to Canada the Hudson's Bay Company have signified to Lord Granville their acceptance of the terms proposed by him for the surrender to Her Majesty of their territorial rights in Rupert's Land. We have, therefore, the honour to submit the same, with a memorandum of the "details" agreed to by us on behalf of the Canadian Government, for the approval of your Excellency, and for such action thereupon as your Excellency may be advised to take.

All of which is respectfully submitted.

GEO. E. CARTIER,
WM. MCDOUGALL.

OTTAWA, May 8, 1869.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON 14TH MAY, 1869.*

The Committee have had under consideration the accompanying report and correspondence of the delegates appointed, by Orders in Council of 1st October last, to proceed to England to negotiate the terms for the acquisition by Canada of Rupert's Land and the North-West Territory, and they humbly advise that the said report and the terms agreed upon, as set forth in the said report and correspondence, be approved by your Excellency and submitted for the consideration and sanction of Parliament.

WM. H. LEE, Clerk, P. C.

To the Honourable the Secretary of State,
etc., etc., etc.

* Sess. Papers, Can., 1869, No. 25.

Message of the Governor-General to the House of Commons.*

John Young.

The Governor-General transmits, for the consideration of the House of Commons, the report of the delegates appointed to negotiate for the acquisition of Rupert's Land and the North-West Territory.

Government House,
Ottawa, 17th May, 1869.

Resolutions of the Senate and House of Commons of Canada of 28th May, 1869.†

Resolved,—That the Senate and Commons of the Dominion of Canada, during the first session of the first Parliament of Canada, adopted an Address to Her Majesty, praying that Her Majesty would be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the provisions of the 146th section of "*The British North America Act*, 1867," and on the terms specified in that Address, to unite Rupert's Land and the North-west Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Her Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of government and legislation as regards those territories.

Resolved,—That the Joint Address of the Senate and Commons of Canada was duly laid at the foot of the Throne, and that Her Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies to the Governor-General of Canada, under date of 23rd of April, 1868, signified her willingness to comply with the prayer of the said Address; but she was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received Her Majesty's assent on the 31st July, 1868.

Resolved,—That by despatch dated 8th August, 1868, from the Honourable Secretary of the State for Colonies, the Governor-General was informed, that in pursuance of the powers conferred by the Act for the surrender of the Hudson's Bay Territories to Her Majesty, he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an Order of the Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William McDougall, C.B., were appointed a delegation to England, to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-west Territory into union with Canada, either with or without Rupert's Land, as it might be found practicable and expedient.

Resolved,—That the delegates proceeded on their mission to England and entered into negotiations with his Grace the Duke of Buckingham and Chandos, the Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia. That terms of agreement were conditionally assented to by the delegates on behalf of the Dominion, and on their return to Canada were submitted with a Report dated 8th May, 1869, which was approved by His Excellency the Governor in Council, on the 14th day of the same month.

Resolved,—That the Senate will be prepared to concur in accepting the transfer of the territorial and other rights of the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada or

---

* Sess. Papers, Can., 1869, No. 25.

† Journals, House of Coms., Can., 1869, p. 150; Prefix to Stats., Can., 1872, p. lxviii.

British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada, by the Hon. Sir George Et. Cartier, Baronet, and the Hon. William McDougall, C.B., and on behalf of the Hudson's Bay Company, by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent Memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following: [*See* this letter of 9th March, 1869, containing the terms, numbered therein 1 to 12 inclusive, and the memorandum of 22nd March, 1869, and the subsequent memorandum of 29th March, 1869, in the order of their respective dates, *ante*, pp. 170, 176 and 177.]

Resolved,—That this House learns with satisfaction, by letter from the Under-Secretary of State for the Colonies, of 9th March last, that, in fulfilment of the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, Her Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000, the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

Resolved,—That the Senate will be ready to concur with the House of Commons in an Address to Her Majesty, that she will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the 146th clause of "*The British North America Act*, 1867," and the provisions of the Imperial Act, 31 & 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing Resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in, the joint Address of the Senate and the House of Commons of Canada, adopted during the first session of the first Parliament of Canada, and hereinbefore referred to.

Resolved,—That upon the transference of the territories in question to the Canadian Government, it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer.

Resolved,—That the Governor in Council be authorized and empowered to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

Address of the Senate and House of Commons of Canada to Her Majesty the Queen.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:

That, during the first session of the first Parliament of this Dominion, we adopted an Address to your Majesty, praying that Your Majesty would be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the 146th Section of "*The British North America Act*, 1867," and on the terms specified in that Address, to unite Rupert's Land and the North-West Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Your Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of Government and legislation as regards those territories.

That our joint Address was duly laid at the foot of the Throne, and that Your Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies to the Governor-General of Canada, under date of the 23rd April, 1868, signified Your

* Journals, House of Coms., Canada, 1869, p. 153; Prefix to Stats., Can., 1872, p. lxxiii.

Majesty's willingness to comply with the prayer of the said Address, but that Your Majesty was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received Your Majesty's assent on the 31st July, 1868.

That by a despatch dated 8th August, 1868, from the Honourable the Secretary of State for the Colonies, the Governor-General was informed that in pursuance of the powers conferred by the Act for the surrender of the Hudson's Bay territories to Your Majesty he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an Order of the Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, and the Honourable William McDougall, C.B., were appointed a delegation to England to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-West Territory into union with Canada either with or without Rupert's Land, as might be found practicable and expedient.

That the delegates proceeded on their mission to England, and entered into negotiations with his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada, or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada by the Honourable Sir George Et. Cartier, Baronet, and the Honourable William McDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederic Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following: [This letter of 9th March, 1869, containing the terms numbered 1 to 12 inclusive, and the memorandum of 22nd March, 1869, and the subsequent memorandum of 29th March, 1869, are to be found, in order of date, *ante*, pp. 170, 176 and 177.]

That we learn with satisfaction by letter from the Under-Secretary of State for the Colonies, of the 9th March last, that in fulfilment of the expectations held out in Mr. Cardwell's despatch of the 17th of June, 1865, Your Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000, the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

That upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer; and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

We therefore most humbly pray that Your Majesty will be graciously pleased, by and with the advice of your Most Honourable Privy Council, under the 146th clause of "*The British North America Act*, 1867," and the provisions of the Imperial Act, 31 and 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing resolutions, and also to unite the North-Western Territory with the Dominion of Canada as prayed for by and on the terms and conditions contained in our joint Address adopted during the first session of the first Parliament of this Dominion, and hereinbefore referred to.

The Senate, Monday, May 31, 1869.

JOSEPH CAUCHON,
Speaker.

House of Commons, Ottawa, May 29, 1869.

JAMES COCKBURN,
Speaker.

An Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada.*

(*Extracts.*)

Whereas it is probable that Her Majesty the Queen may, pursuant to "*The British North America Act*, 1867," be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next Session of the Canadian Parliament: And whereas it is expedient to prepare for the transfer of the said territories from the local authorities to the Government of Canada, at the time appointed by the Queen for such admission, and to make some temporary provision for the Civil Government of such territories until more permanent arrangements can be made by the Government and Legislature of Canada; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The said territories when admitted as aforesaid, shall be styled and known as "The North-West Territories."

5. All the laws in force in Rupert's Land and the North-Western Territory, at the time of their admission into the Union, shall, so far as they are consistent with "*The British North America Act*, 1867,"—with the terms and conditions of such admission approved of by the Queen under the 146th section thereof,—and with this Act,—remain in force until altered by the Parliament of Canada, or by the Lieutenant-Governor under the authority of this Act.

6. All public officers and functionaries holding office in Rupert's Land and the North-Western Territory, at the time of their admission into the Union, excepting the public officer or functionary at the head of the administration of affairs, shall continue to be public officers and functionaries of the North-West Territories with the same duties and powers as before, until otherwise ordered by the Lieutenant-Governor, under the authority of this Act.

7. This Act shall continue in force until the end of the next Session of Parliament.

Extract from the Speech of His Honour the Lieutenant-Governor of Ontario on the Opening of the Legislature, 3rd November, 1869.†

It having been officially announced that the North-West Territory, lately under the administration of the Hudson's Bay Company, is about to be annexed to the Dominion of Canada, and looking to the certainty of this measure being carried out, I venture to suggest the propriety of your providing for an early ascertainment of the boundary line between that territory and this Province.

Deed of Surrender:

The Governor and Company of Adventurers of England trading into Hudson's Bay to Her Majesty Queen Victoria.‡

To all whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England trading into Hudson's Bay, send greeting.

Whereas the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," by letters patent granted by His late Majesty King Charles the Second,

---

* Dom. Stat., 32 and 33 Vict., cap. 3, 1869. Assented to 22nd June, 1869.

† Journals Leg. Ass., 1869, vol. 3, p. 2.

‡ Prefix to Stats., Can., 1872, p. lxxvii.

in the twenty-second year of his reign, whereby His said Majesty granted unto the said Company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's plantations or colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving the faith, allegiance and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors such rights of government and other rights, privileges and liberties, franchises, powers and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said letters patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers and authorities thereby granted; and the said Governor and Company have exercised or assumed rights of government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas by the "British North America Act, 1867," it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, on address from the Houses of Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union of the Dominion of Canada, on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas, by the "Rupert's Land Act, 1868," it is enacted (amongst other things) that for the purposes of that Act, the term "Rupert's Land" shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada, in pursuance of the 146th section of the "British North America Act, 1867," and that upon the acceptance by Her Majesty of such surrender, all rights of government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land, or elsewhere, trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the "Rupert's Land Act, 1868," contained, all the rights of government and other rights, privileges, liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said letters patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in

order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows, that is to say :—

1. The Canadian Government shall pay to the Company the sum of £300,000 sterling, when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them, or their officers or agents, whether in Rupert's Land or any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America, not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.

5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of land so set out, the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding eight cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last article the fertile belt is to be bounded as follows :— On the south by the United States' boundary ; on the west by the Rocky Mountains ; on the north by the northern branch of the Saskatchewan River ; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purposes of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.

8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block ; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or has a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity ; and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.

12. Canada is take over the materials of the electric telegraph at cost price ; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims to Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government ; and the Company shall be relieved of all responsibility in respect of them.

And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated.

Now know ye, and these presents witness, that in pursuance of the powers and provisions of the "Rupert's Land Act, 1868," and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said Governor and Company by the said recited letters patent of His late Majesty King Charles the Second ; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said letters patent. In witness whereof, the Governor and Company of Adventurers of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, one thousand eight hundred and sixty-nine.

THE SCHEDULE ABOVE REFERRED TO.

Northern Department, Rupert's Land.

District.	Post.	Acres of Land.	
English River	Isle à la Crosse	50	
	Rapid River	5	
	Portage La Loche	20	say 10 acres each end of Portage.
	Green Lake	100	
	Cold Lake	10	
	Deer's Lake	5	
			190 acres in English River District.
Saskatchewan	Edmonton House	3,000	
	Rocky Mountain House	500	
	Fort Victoria	3,000	
	St. Paul	3,000	
	Fort Pitt	3,000	
	Battle River	3,000	
	Carlton House	3,000	
	Fort Albert	3,000	
	Whitefish Lake	500	
	Lac La Biche	1,000	
	Fort Assineboine	50	
	Lesser Slave Lake	500	
	Lac Ste. Anne	500	
	Lac La Nun	500	
	St. Albert	1,000	
	Pigeon Lake	100	
	Old White Mud Fort	50	
			25,700 acres in Saskatchewan District.
Cumberland	Cumberland House	100	
	Fort La Cocne	3,000	
	Pelican Lake	50	
	Moose Woods	1,000	
	The Pas	25	

District.	Post.	Acres of Land.	
Cumberland	Moose Lake	50	
	Grande Rapid Portage	100	50 acres at each end of Portage.
			4,325 acres in Cumberland District.
Swan River	Fort Pelly	3,000	
	Fort Ellice	3,000	
	Q'Appelle Lakes	2,500	
	Touchwood Hills	500	
	Shoal River	50	
	Manitobah	50	
	Fairford	100	
			9,200 acres in Swan River District.
Red River	Upper Fort Garry and Town of Winnipeg		
	Lower Fort Garry (including the farm the Company now have under cultivation)		Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council.
	White Horse Plain		
Manitobah Lake	Oak Point	50	
Portage La Prairie		1,000	
			1,050
Lake La Pluie	Fort Alexander	500	
	Fort Frances	500	
	Eagle's Nest	20	
	Big Island	20	
	Lac du Bonnet	20	
	Rat Portage	50	
	Shoal Lake	20	
	Lake of the Woods	50	
	Whitefish Lake	20	
	English River	20	
	Hungry Hall	20	
	Trout Lake	20	
	Clear Water Lake	20	
	Sandy Point	20	
			1,300 acres in Lac La Pluie District.
York	York Factory	100	
	Churchill	10	
	Severn	10	
	Trout Lake	10	
	Oxford	100	
	Jackson's Bay	10	
	God's Lake	10	
	Island Lake	10	
			260
Norway House	Norway House	100	
	Berens River	25	
	Grand Rapid	10	
	Nelson's River	10	
			145
Total in	Northern Department		42,170 acres.

Southern Department, Rupert's Land.

Albany	Albany Factory	100	
	Martin's Falls	10	
	Osnaburg	25	
	Lac Seul	500	
			635
East Main	Little Whale River	50	
	Great Whale River	50	
	Fort George	25	
			125
Moose	Moose Factory	100	
	Hannah Bay	10	
	Abitibi	10	
	New Brunswick	25	
			145

District.	Post.	Acres of Land.	
Rupert's River	Rupert's House	50	
	Mistassing	10	
	Temiskamay	10	
	Woswonaby	10	
	Mechiskun	10	
	Pike Lake	10	
	Nitchequou	10	
	Kamapiscan	10	
			120
Kinogumissee	Matawagamique	50	
	Kuckatoosh	10	
			60
Total in	Southern Department		1,085 acres.

Montreal Department, Rupert's Land.

Superior	Long Lake	10	
Temiscaminque	Kakababeagino	10	
			20
Labrador	Fort Nascopie	75	
	Outposts, ditto	25	
	Fort Chimo (Ungava)	100	
	South River, Outposts	30	
	George's River	50	
	Whale River	50	
	North's River	25	
	False River	25	
			380
Total in	Montreal Department		400 acres.

Northern Department, North-West Territory

Athabasca	Fort Chippewyan	10	
	Fort Vermilion	500	
	Fort Dunvegan	50	
	Fort St. John's	20	
	Forks of Arthabasca River	10	
	Battle River	5	
	Fond du Lac	5	
	Salt River	5	
			605 acres in Athabaska District.
McKenzie's River	Fort Simpson	100	
	Fort Liard	300	
	Fort Nelson	200	
	The Rapids	100	
	Hay River	20	
	Fort Resolution	20	
	Fort Rae	10	
	Fort du Lac	10	
	Fort Norman	10	
	Fort Good Hope	10	
	Peel's River	10	
	Lapierre's House	10	
	Fort Halkett	100	
			900 acres in McKenzie's R. District.
Total in North-West Territory			1,505 acres.

RECAPITULATION.

			Acres.
Northern Department,	Rupert's Land		42,170
Southern	do	do	1,085
Montreal	do	do	400
Northern	do	North-West Territory	1,505
			45,160

TELEGRAM—THE GOVERNOR-GENERAL, SIR JOHN YOUNG, TO LORD GRANVILLE, COLONIAL SECRETARY.*

OTTAWA, November 23rd, 1869.

Mr. McDougall, designated Lieutenant-Governor of North-West Territory, after transfer, is stopped on the way to Fort Garry by small armed force of insurgent half-breeds. The Hudson's Bay Company authorities, in whom government still rests, are seemingly powerless and inactive. Half-breeds have appointed Provisional Committee of Government; John Bruce, president. Governor McTavish very ill, said to be dying.

TELEGRAM—THE GOVERNOR-GENERAL, SIR JOHN YOUNG, TO LORD GRANVILLE, COLONIAL SECRETARY.*

OTTAWA, November 27th, 1869.

Your telegram received and considered by Privy Council.

On surrender by Company to Queen, the government of Company ceases. The responsibility of administration of affairs will then rest on Imperial Government. Canada cannot accept transfer unless quiet possession can be given. Anarchy will follow. Rebels have taken possession of Fort Garry, and it is said are using the stores of Company. A change of feeling is hoped for, and till then the governing power should remain with present authorities. My advisers think Proclamation should be postponed. Mr. McDougall will remain near frontier, waiting favourable opportunity for peaceable ingress. Parties having influence with Indians and half-breeds are proceeding to join McDougall.

JOHN YOUNG.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
30th November, 1869.

SIR,—I have received, with much regret, your telegraphs of the 23rd and 27th instant, informing me that disturbances have occurred in the Red River Settlement, and that Canada cannot accept the transfer of the Territories hitherto occupied by the Hudson's Bay Company, unless quiet possession can be given.

It becomes necessary, under these circumstances, to recall to you the state of this question.

Although Her Majesty's Government have long desired that the title of the Hudson's Bay Company to these Territories should be extinguished, yet this extinction has been uniformly pressed forward by and in the interests of Canada.

On the 11th of November, 1864, a Committee of the Executive Council of Canada expressed themselves "more than ever impressed with the importance of opening up to settlement and cultivation the lands lying between Lake Superior and the Rocky Mountains," and expressed the opinion that the first step towards settlement was the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil or exclusive right of trade.

By Mr. Cardwell's despatch of the 17th June, 1866, it appears that the Ministers of the then Province of Canada desired that the North-West Territory should be made over to that Province, and undertook to negotiate with the Company for the termination of their rights.

---

* Sess. Papers, Can., 1870, No. 12.

On the 22nd of June, 1866, the Executive Council of Canada expressed the opinion that the most inviting parts of the territory would shortly be peopled by persons whom the Company were unable to control, and who would establish a Government and tribunals of their own, and assert their political independence; that such a community would cut British North America in two, and retard or prevent their communication by railway, and, therefore, that "the future interests of Canada and all British North America were vitally concerned in the immediate establishment of a strong Government there, and in its settlement as a part of the British colonial system."

They express their conviction that the Confederate Government and Legislature will feel it to be one of their first duties to open negotiations with the Company for the transfer of their claims to the territory which, but for the approach of Confederation, they would themselves have done. And meantime they pray Her Majesty's Government to discountenance and prevent any such sales of any portion of the territory as had then been proposed to its existing proprietors.

By the Act of Parliament which effected Confederation, the Queen was authorized on certain terms to annex these territories to the Dominion. These powers the Canadian Parliament prayed her to exercise. Her Majesty's Government were unable to concur in the terms on which the transfer was proposed to be made; but after prolonged negotiations and the passing of a second Act of Parliament, fresh terms were agreed upon between the Hudson's Bay Company and the representatives of the colony, and were embodied in a second address from the Canadian Parliament. The other requisite instruments have been prepared, and the Canadian Government itself has named, first, the 1st October, and next, the 1st of December, for the completion of the transfer. Meanwhile the Company have been informed, by the agents of the Canadian Government (Messrs. Baring and Glyn), that the indemnity of £300,000 will be paid on due proof of the completion of their surrender.

Throughout these negotiations it has never been hinted that the Company is to be bound to hand over its territory in a state of tranquillity. Rather its inability to secure that tranquillity, and the dangers resulting from that inability to the neighbouring colony, is taken for granted as a reason why its responsibilities should be adopted by Canada.

This being the state of the case, the Canadian Government, in anticipation of the transfer, now agreed on by all parties, undertook certain operations in respect of land, subject in the first instance to a faint protest from the Company, and directed the future Lieutenant-Governor to enter the territory. The result, unfortunately, has not met the expectations of the Colonial Government.

Mr. McDougall was met, it appears, by armed resistance, and the disturbances caused by his presence seem to have resulted in the plunder of the Company's stores, and the occupation of Fort Garry by the insurgent portion of the population.

But the Canadian Government having, by this measure, given an occasion to an outburst of violence in a territory which they have engaged to take over, now appear to claim the right of postponing indefinitely the completion of their engagements to the Company, and of imposing on Her Majesty's Government the responsibility of putting down the resistance which has thus arisen.

This, at least, I understand from the passages "on surrender by the Company to the Queen of Great Britain, the government of the Company ceases," and "Canada cannot accept the transfer unless quiet possession can be given."

You will, however, perceive on referring to the Act of Parliament 31 and 32 Vict. cap. 105, that if, on the one hand, the Parliament of Canada embodies in an address the terms on which they are prepared to receive Rupert's Land into the Dominion; and if, on the other hand, the Company surrenders their territory on terms agreed on with Her Majesty, it merely remains for Her Majesty, first, by acceptance of the surrender, and next, by Order in Council, to give effect to the arrangement thus agreed to by both parties; and it is provided that the surrender of the territory becomes null and void, unless, within a month of its acceptance by the Queen, Rupert's Land is, by such Order in Council, admitted into the Dominion of Canada.

You will see, therefore, that it is impossible for Her Majesty to accept the surrender

of the Hudson's Bay Company's territory unless it is certain within a month to be transferred to Canada.

Unless, therefore, it is to be so transferred, it must remain under the jurisdiction of the Company, and liable to all the disorders which are to be expected when the prestige of a Government, long known to be inadequate, is shaken by the knowledge that it is also expiring, and by the appearance, however well intended, of its successor. This is not a state of things in which Her Majesty's Government ought to acquiesce, if they have the power of preventing it.

The British Government is, by the Act of Parliament, practically invested with the power, and therefore the duty, of giving effect to what has been deliberately agreed upon between the Company and the colony. If, after all that has passed, the Company present their surrender and claim its acceptance by Her Majesty as a means of enabling them to enforce obligations which it is too late to repudiate, and for the fulfilment of which the Canadian Government has itself fixed a time, I do not see how it is possible for Her Majesty's Government to reject their application on the grounds put forward by your Ministers.

I am glad to see that they are doing what they can to assist in the restoration of order, and I should not have been surprised to learn that, while completing the transaction practically, as between themselves and the Company, they were desirous of choosing their own moment for a public announcement of the change of jurisdiction.

But while Her Majesty's Government would have been ready to acquiesce in any such short postponement of the formal Act of transfer, they do not feel that they are at liberty to treat the transaction as capable of being re-opened, or that they can refuse an application from the Company to complete a transfer which appears to them, not merely the only means of providing for the restoration of order, but also to be due as a matter of mere justice to one of the parties.

Her Majesty's Government have reason to believe that the Hudson's Bay Company feel it to be their interest, and it is their wish, to assist to the extent of their power the Government of the Dominion; and I have to instruct you to impress strongly upon your Ministers, the anxious desire of Her Majesty's Government to make the authority of the Queen available in their support.

I have the honour to be, Sir,
Your most obedient, humble servant,

GRANVILLE.

Governor-General

The Rt. Hon. Sir John Young, Bart., G.C.B., G.C.M.G.,
etc., etc., etc.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, CANADA, DATED THE 16TH DECEMBER, 1869.*

The Committee of Council have had before them the despatch of the Right Hon. the Secretary of State for the Colonies of the 30th ult., on the subject of the two telegrams sent by your Excellency on the 23rd and 27th ult., to the Colonial Office, on the subject of the disturbances in the Red River Settlement.

The Committee readily acknowledge the correctness of the narrative in the despatch of the proceedings which resulted in the final arrangements for the transfer of the North-Western Territory to Canada.

The circumstances which created the desire of the Government and people of Canada to acquire that country, have been so often and so recently stated, that they do not seem to require reiteration. It was alike the interest of Her Majesty's Government, Canada, and the Hudson's Bay Company, that the transfer should be made. Canada still desires to acquire the territory, and is quite ready to perform all the obligations that she has

*Sess. Papers, Can., 1870, No. 12.

incurred under the recent arrangements made with Her Majesty's Government and the Company for the completion of the transfer.

At the same time, it would seem clear that if Canada is bound to accept the transfer of the territory, the Company is equally bound to make it. It surely was never contemplated by any of the parties engaged in the negotiations that the transfer was to be a mere interchange of instruments. It must, from the nature of things, have been understood by all parties, that the surrender by the Company to the Queen, and the transfer by Her Majesty to the Dominion, was not to be one of title only. The Company was to convey not only their rights under the charter, but the territory itself of which it was in possession, and the territory so conveyed was to be transferred by Her Majesty to Canada.

That there would be an armed resistance by the inhabitants to the transfer was, it is to be presumed, unexpected by all parties; it certainly was so by the Canadian Government.

In this regard, the Company cannot be acquitted of all blame. They had an old and fully organized Government in the country, to which the people appeared to render ready obedience. Their Governor was advised by Council, in which some of the leading residents had seats. They had every means of information as to the state of feeling existing in the country.

They knew, or ought to have known, the light in which the proposed negotiations were viewed by the people under their rule. If they were aware of the feeling of discontent, they ought frankly to have stated it to the Imperial and Canadian Governments. If they were ignorant of the discontent, the responsibility of such wilful blindness on the part of their officers must rest upon them.

For more than a year these negotiations have been actively proceeded with, and it was the duty of the Company to have prepared the people under its rule for the change—to have explained the precautions taken to protect the interests of the inhabitants, and to have removed any misapprehensions that may have existed among them.

It appears that no steps of any kind, in that direction, were taken. The people have been led to suppose that they have been sold to Canada, with an utter disregard of their rights and position.

When Governor McTavish visited Canada in June last, he was in communication with the Canadian Government, and he never intimated that he had even a suspicion of discontent existing, nor did he make any suggestions as to the best mode of effecting the proposed change, with the assent of the inhabitants.

Lord Granville states that "Throughout these negotiations, it has never been hinted that the Company is to be bound to hand over its territory in a state of tranquillity. Rather its inability to secure that tranquillity, and the dangers resulting from that inability to the neighbouring colony, is taken for granted as a reason why its responsibilities should be adopted by Canada." Now the obvious reason why no express stipulation to that effect was made was, that it was assumed, by all parties, that the Company had both the right and the power to hand over the territory. It *was* in a state of tranquillity, and no suggestion was made of the possibility of such tranquillity being disturbed. Canada did not allege, nor did the Company admit, any inability on the part of the latter to secure the tranquillity of the country in its present condition.

It is true that Canada had pointed out that in the future, with the population of the United States rapidly pressing forward towards the boundaries of the North-West territory, such pressure would soon overflow into British territory, and that the Company would, in such case, be unable to govern or control the large and alien population which might then take possession of the fertile country along the frontier.

But this state of things has not yet arisen, and the resistance comes not from any strangers or new comers, but from those born and brought up under the government of the Company, and who have hitherto yielded it a willing allegiance.

These statements are not made as a matter of complaint against the Company, but simply as a justification of the course taken by the Canadian Government, which is observed upon in the despatch. That course has been governed solely by a desire to carry out the transfer under the arrangement in the quietest and best manner possible; and in a way that will not leave behind it any cause for discontent or disquiet in the future.

The resistance of these misguided people is evidently not against the Sovereignty of Her Majesty or the Government of the Hudson's Bay Company, but to the assumption of the government by Canada.

They profess themselves satisfied to remain as they are, and that if the present system of government were allowed to continue, they would at once disperse to their homes.

It is obvious, then, that the wisest course to pursue is, for the present, to continue the authority of the Company, which the insurgents affect to respect, while steps are being taken to remove the misapprehensions which exist, and to reconcile the people to the change.

Any hasty attempt by the Canadian Government to force their rule upon the insurgents would probably result in armed resistance and bloodshed. Every other course should be tried before resort is had to force. If life were once lost in an encounter between a Canadian force and the inhabitants, the seeds of hostility to Canada and Canadian rule would be sown, and might create an ineradicable hatred to the union of the countries, and thus mar the future prosperity of British America.

If anything like hostilities should commence, the temptation to the wild Indian tribes, and to the restless adventurers who abound in the United States (many of them with military experience gained in the late civil war), to join the insurgents, would be almost irresistible. Already it is said that the Fenian organization look upon this rising as another means of exhibiting their hatred to England.

No one can foresee the end of the complications that might thus be occasioned, not only as between Canada and the North-West, but between the United States and England.

From a sincere conviction of the gravity of the situation, and not from any desire to repudiate or postpone the performance of any of their engagements, the Canadian Government have urged a temporary delay of the transfer.

This is not a question of money—it may be one of peace or war. It is one in which the present and future prosperity of the British possessions in North America is involved, which prosperity hasty action might permanently prejudice.

Even were the £300,000 paid over, the impolicy of putting an end to the only constituted authority existing in the country and compelling Canada to assert her title by force would remain.

It is better to have the semblance of a government in the country than none at all. While the issue of the Proclamation would put an end to the government of the Hudson's Bay Company, it would not substitute government by Canada therefor. Such a government is physically impossible until the armed resistance is ended, and thus a state of anarchy and confusion would ensue, and a legal status might be given to any Government *de facto*, formed by the inhabitants for the protection of their lives and property.

On a review of the whole circumstances, the Committee would recommend that your Excellency should urge upon Her Majesty's Government the expediency of allowing matters to remain as they are until quiet is restored, or, in case of failure of all effort to do so, the time should have arrived when it is possible to enter the country in force, and compel obedience to Her Majesty's Proclamation and authority.

As by the terms of the late Act, the surrender to the Queen must be followed, within a month, by Her Majesty's Order in Council, admitting Rupert's Land into the Dominion of Canada, the proper course seems to be that the surrender itself should be postponed, and that the purchase money should remain on deposit meanwhile.

The Committee would also request your Excellency to assure Lord Granville, that the Government here have taken, and are taking, active measures to bring about a happier state of affairs.

They have sent on a mission of peace to the French half-breeds now in arms, the Very Reverend Mr. Thibault, Vicar-General (who has laboured as a clergyman among them for thirty-nine years), accompanied by Colonel de Salabery, a gentleman well acquainted with the country, and with the manners and feelings of the inhabitants. These gentlemen are fully informed of the beneficent intentions of the Canadian Government, and can disabuse the minds of the people of the misrepresentations made by designing foreigners.

They have also sent Mr. Donald A. Smith, the Chief Agent of the Hudson's Bay Company, at Montreal, as a Special Commissioner. From his position as an officer of the Company, he is likely to obtain ready access to Fort Garry, where he can strengthen the hands of Governor McTavish (now weakened by long illness), and arrange with the loyal and well-affected portion of the people for a restoration of order.

It is confidently hoped that the measures taken will succeed, but in the event of failure, the Government are making preparations, by the construction of boats, and otherwise, for sending a military force in early spring. In these efforts the Canadian Government are glad to believe that they will have the hearty co-operation of Her Majesty's Government, and the Hudson's Bay Company.

JOHN A. MACDONALD.

16th December, 1869.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON'S BAY HOUSE,
LONDON, December 28th, 1869.

SIR,—I am desired by the Committee of the Hudson's Bay Company to transmit to you, for the information of Earl Granville, copies of the several communications named in the accompanying lists, some of which have been already privately forwarded to his Lordship.†

The Committee regret extremely the unfortunate occurrences described by Mr. McTavish. They are most anxious to co-operate with Her Majesty's Government in any measures which Earl Granville may think it expedient to adopt with a view to the restoration of order, and the settlement of the Territory. They sincerely trust that these objects may be attained without the employment of force, and above all without a collision between the different sections of the population of the Red River Settlement, feeling assured that the effects of any such collision would be very disastrous to the prosperity of the country. At the same time they desire me to express to Earl Granville their conviction that it is most undesirable to leave matters in their present undefined position. The Company's authority which (as Lord Granville is aware) has long been exercised under a sense of difficulty, has been greatly weakened by the steps which have been taken for the transfer of the country to the Dominion of Canada; a transfer which, according to the arrangements publicly and officially announced, ought to have been formally completed on the 1st instant. On the other hand, the authority of the Dominion has not yet been established; and the announcement that the Dominion Government intend to withhold the purchase money, and therefore, of course, to abstain from accepting the responsibility of government until the present troubles are at an end, must naturally deprive their action of any force.

The Committee cannot recognize, in the circumstances which have occurred, any reason for the Dominion Government delaying the performance of the engagements into which they have entered, under the sanction of Her Majesty's Government, with this Company, and they trust that Earl Granville will take measures for giving immediate effect to that engagement, formally placing the Settlement under the charge of the authority which must be responsible for its good government, and at the same time causing the stipulated price of the land to be handed over to the Company.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

Sir F. Rogers, Bart., etc., etc., etc.,
Colonial Office.

---

* Sess. Papers, Can., 1870, No. 12.

† [These relate to the disturbances in the Red River Settlement.—G. E. L.]

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
8th January, 1870.

SIR,—I am directed by Earl Granville to acknowledge the receipt of your letter of the 28th of December, relating to the disturbances which have occurred in the Red River Settlement, and urging that the arrangements for the transfer of the territories may proceed, and the stipulated price be paid over to the Hudson's Bay Company without delay.

Lord Granville desires me to inform you, that he has lately received from the Governor-General of Canada, a Minute of the Privy Council of the Dominion, conveying the expression of their views on the present position of the Canadian Government in regard to this question.

In this Minute, the Canadian Government repeat the expression of their desire to acquire the territory, and of their readiness to perform all the obligations incurred by Canada under the recent arrangements for the completion of the transfer. They urge a temporary delay in proceeding with the transfer, from a conviction of the gravity of the present situation, and not from any desire to repudiate or postpone the performance of any of their engagements. They submit that the government of the Company, which the inhabitants have been accustomed to respect, should be continued while steps are being taken to remove the misapprehensions which exist, and to reconcile the people to the change.

They point out, that any hasty attempt by the Canadian Government to force their rule on the insurgents might lead to bloodshed, and sow an ineradicable hatred to the union of the countries, and thus mar the further prosperity of British North America; and they represent that even were the purchase money paid over to the Company at once, it would not the less remain impolitic to put an end to the only existing authority in the country, and compel Canada to assert her title by force. They inform Lord Granville that they are taking active measures to bring about a happier state of affairs. They have sent on a mission of peace to the French half-breeds, now in arms, the Very Revd. Mr. Thibault, Vicar-General (who has laboured as a clergymen among them for thirty-nine years), and also Colonel de Salabery, a gentleman well acquainted with the country, and with the manners and feelings of the inhabitants.

They have also sent Mr. Donald A. Smith, the Chief Agent of the Hudson's Bay Company, at Montreal, as a Special Commissioner. From his position as an officer of the Company, the Committee anticipate that he will obtain ready access to Fort Garry, and that he will be able to strengthen the hands of Governor McTavish, and arrange with the loyal and well-affected portion of the people for a restoration of order. The Committee express their confident hope that these measures will succeed; but, in the event of failure, the Canadian Government are making preparations for sending a military force in the early spring.

Lord Granville desires me to add that the reasons given by the Canadian Government for delaying the transfer, weighty in themselves, become practically conclusive, when it is considered that Her Majesty's Government and the Hudson's Bay Company must alike look to that Government for the practical accomplishment of the transfer, and that they appear, in fact, to be conducting it in the spirit which Her Majesty's Government approve, and which is most calculated to avoid that injury to the trade of the Company which Mr. McTavish anticipated from any violent measures.

Lord Granville, moreover, learns from the law officers of the Crown, that, although it would be competent to Her Majesty's Government to complete the transfer by accepting the surrender of the Company, and issuing the requisite Order in Council, yet this acceptance would not place the Company in a position to obtain, by any legal process, the sum of £300,000 recently deposited by Mr. Rose for the purpose of being available for their payment; and considering that even after the surrender is completed, questions may possibly arise, or further arrangements may have to be made, between the Hudson's Bay Company and the Canadian Government, his Lordship believes that a short delay in the

* Sess. Papers, Can., 1870, No. 12.

completion of the contract, however in itself inconvenient, may be more than compensated by ensuring that the surrender is finally effected with the full consent and agreement of both parties interested.

I am, etc.,

F. Rogers.

The Right Honourable Sir Stafford H. Northcote, Bart., etc.

The Colonial Secretary to the Governor-General.*

Downing Street,

8th January, 1870.

No. 134, Nov. 25th, 1869.
" 147, Dec. 9th, "
" 148, " 11th, "
" 156, " 17th, "
" 164, " 23rd, "
Hudson's Bay Company, Dec. 28th, 1869.
Colonial Office, Jan. 8th, 1870.

Sir,—I have the honour to acknowledge the receipt of your despatches noted in the margin, relating to the recent disturbances in the Red River Settlement. In the despatch No. 156 you enclose copy of the Minute of the Privy Council of Canada, conveying their views on the present position of the Canadian Government in regard to the transfer of the Hudson's Bay Company's territories to Canada. I transmit, for your information, a copy of a letter on this subject, which has been received from the Hudson's Bay Company, together with a copy of the answer which I have caused to be returned to it. * * * [The remainder omitted as being irrelevant.—G. E. L.]

I have, etc.,

Granville.

Governor-General,
The Rt. Hon. Sir John Young, Bart., G.C.B., G.C.M.G.,
etc., etc., etc.

An Act to Amend and Continue the Act 32 and 33 Victoria, Chapter 3; and to Establish and Provide for the Government of the Province of Manitoba.†

(Extract.)

Whereas it is probable that Her Majesty the Queen may, pursuant to the "British North America Act, 1867," be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next session of the Parliament of Canada:

And whereas it is expedient to prepare for the transfer of the said territories to the Government of Canada at the time appointed by the Queen for such admission:

And whereas it is expedient also to provide for the organization of part of the said territories as a Province, and for the establishment of a Government therefor, and to make provision for the civil government of the remaining part of the said territories, not included within the limits of the Province:

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under the authority of the 146th section of the "British North America Act, 1867," shall, by Order in Council in that behalf, admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, there shall be formed out of the same a Province, which shall be one of the Provinces of the Dominion of Canada, and which shall be called the Province of Manitoba, and be bounded as follows: that is to say, commencing at the point where the meridian of ninty-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude; thence due west along the said parallel of forty-nine degrees north latitude

* Sess. Papers, Can., 1870, No. 12.

† Dom. Stat., 33 Vic., Cap. 3. Assented to 12th May, 1870.

(which forms a portion of the boundary line between the United States of America and the said North-Western Territory) to the meridian of ninety-nine degrees of west longitude ; thence due north along the said meridian of ninety-nine degrees west longitude, to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude ; thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before mentioned meridian of ninety-six degrees west longitude ; thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning.

2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the "British North America Act, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.

31. And whereas it is expedient, towards the extinguishment of the Indian title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is thereby enacted, that, under regulations to be from time to time made by the Governor-General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise as the Governor-General in Council may from time to time determine.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows :—

(1) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

(2) All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(3) All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that Company surrendered Rupert's Land to Her Majesty.

35. And with respect to such portion of Rupert's Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutentant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned.

36. Except as hereinbefore is enacted and provided, the Act of the Parliament of Canada, passed in the now last session thereof, and entitled "An Act for the Temporary Government of Rupert's Land, and the North-Western Territory when united with Canada," is hereby re-enacted, extended and continued in force until the first day of January, 1871, and until the end of the session of Parliament then next succeeding.

Imperial Order in Council for the Admission of Rupert's Land and the North-Western Territory into the Dominion.*

At the Court at Windsor, the 23rd day of June, 1870.

Present:

The Queen's Most Excellent Majesty.
Lord President.
Lord Privy Seal.
Lord Chamberlain.
Mr. Gladstone.

Whereas by the "British North America Act, 1867," it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the Schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for the future welfare and good government upon the terms and conditions therein stated:

And whereas by the "Rupert's Land Act, 1868," it was (amongst other things) enacted that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called the Company) to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or purported to be granted by certain letters patent therein recited to the said Company within Rupert's Land, upon such terms and conditions as should be agreed upon by and between Her Majesty and the said Company; provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th section of the "British North America Act, 1867."

And it was by the same Act further enacted that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada:

And whereas a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty praying that Her Majesty will be pleased, under the provisions of the hereinbefore recited Acts, to unite Rupert's Land on the terms and conditions expressed in certain Resolutions therein referred to and approved of by Her Majesty, of which said Resolutions and Address copies are contained in the Schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the hereinbefore first recited Address, and also approved of by Her Majesty:

And whereas a draft Surrender has been submitted to the Governor-General of Canada containing stipulations to the following effect, viz.:—

1. The sum of £300,000 (being the sum hereinafter mentioned) shall be paid by the

* Prefix to Statutes of Canada, 1872, p. lxiii.

Canadian Government into the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of five per cent. per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits, shall be as follows:—

	Acres.
Upper Fort Garry and town of Winnipeg, including the enclosed park around shop, and ground at the entrance of the town	500
Lower Fort Garry (including the farm the Company now have under cultivation)	500
White Horse Plain	500

3. The deduction to be made as hereinafter mentioned from the price of the materials of the electric telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the Company in charge of the depots where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months of such acceptance, with interest at the rate of five per cent. per annum on the amount of such price, computed from the date of such acceptance until the time of payment.

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor-General in accordance with a Report from the Committee of the Queen's Privy Council for Canada; but it was not expedient that the said stipulations, not being contained in the aforesaid second Address, should be included in the Surrender by the said Company to Her Majesty of their rights aforesaid or in this Order in Council.

And whereas the said Company did by deed under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the schedule to this order annexed, marked C, surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said letters patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted or purported to be granted to the said Company by the said letters patent:

And whereas such surrender has been duly accepted by Her Majesty, by an instrument under her Sign Manual and Signet, bearing date at Windsor, the twenty-second day of June, one thousand eight hundred and seventy:

It is hereby ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall, from the day aforesaid, have full power and authority to legislate for the future welfare and good government of the said territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall, from and after the said date, be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second Address of the Parliament of Canada, and approved of by Her Majesty as aforesaid:—

1. Canada is to pay to the Company £300,000, when Rupert's Land is transferred to the Dominion of Canada.

2. The Company are to retain the posts they actually occupy in the North-Western

Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the Schedule of the aforesaid Deed of Surrender. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed [10] acres round Upper Fort Garry; [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.

5. The Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, etc., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or has a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duties on goods introduced by them previous to the surrender.

12. Canada is to take over the materials of the electric telegraph at cost price—such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land under agreements of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

SCHEDULES.

[*Referred to in the foregoing Order in Council.*]

Schedule (A).

[Address to Her Majesty the Queen from the Senate and House of Commons of Canada, to be found in order of date, December 16th and 17th, 1867, *ante*, p. 128.]

Schedule (B).

1. Resolutions.

[Resolutions of the Senate and House of Commons of Canada, to be found in order of date, May 28th, 1869, *ante*, p. 182.]

2. Address.

[Address to Her Majesty the Queen from the Senate and House of Commons of Canada, to be found in order of date, May 29th and 31st, 1869, *ante*, p. 183.]

Schedule (C).

[Deed of Surrender, the Hudson's Bay Company to Her Majesty Queen Victoria, to be found in order of date, 19th November, 1869, *ante*, p. 185.]

REPORT OF MINISTER OF JUSTICE ADVISING IMPERIAL LEGISLATION FOR CONFIRMATION OF MANITOBA ACT AND FOR AUTHORIZING THE ESTABLISHMENT AND THE ALTERATION OF THE LIMITS OF PROVINCES.*

DEPARTMENT OF JUSTICE,

OTTAWA, Dec. 29th, 1870.

The undersigned has the honour to report to your Excellency that during the last session of the Canadian Parliament, while the Act 33 Vic., cap. 3, providing for the establishment and government of the Province of Manitoba was under consideration, the question was raised as to the power of Parliament to pass the Act, and especially those of its provisions which gave the right to the Province to have representatives in the Senate and House of Commons of the Dominion.

"The British North America Act, 1867," provides that:

"The Queen in Council on address from the Houses of Parliament of Canada, may admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions as are in the address expressed, and as the Queen thinks fit to approve, *subject to the provisions of this Act;* and any Order in Council in that behalf shall have effect as if it had been enacted by the Parliament of the United Kingdom."

The address, which was passed by the Parliament of Canada, contained no provisions with respect to the future government of the country, the only terms and conditions contained in it being those agreed upon between the Hudson's Bay Company and Canada as the conditions of their surrender of their Charter to Her Majesty. Even if the terms of the address had included a new constitution for the North-West, it must, under the above cited section, have been subject to the provisions of the Imperial Act of Union.

The Rupert's Land Act, 1868, passed by the Imperial Parliament, provides (5 Section) for the admission of Rupert's Land (but not of the North-Western Territory) into the

* Sess. Papers, Can., 1871, No. 20.

Dominion of Canada; and that, "thereupon, it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain and establish, within the land and territory, so admitted as aforesaid, all such laws, institutions and ordinances, and to constitute such a court and officers as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein."

This provision of the Act may fairly be held to have authorized the Canadian Parliament to pass the Act, giving a constitution to a portion of Rupert's Land; but still the question remains, whether, under the two Imperial Acts referred to, it had the power to give the people of the new Province representation in the Senate and House of Commons of Canada.

The general purview of the "British North America Act, 1867," seems to be confined to the three Provinces of Canada, Nova Scotia and New Brunswick, originally forming the Dominion.

In the constitution of the Senate the Dominion was divided into three divisions, each division having equal representation in that body. It fixes the normal number of the Senate at seventy-two, subject to the provisions of the Act; and the 28th clause provides that the number of Senators shall not at any time exceed seventy-eight; the 147th clause, however, enacting that in case of the admission of Newfoundland and Prince Edward Island, the normal number of Senators shall be seventy-six, and the maximum eighty-two.

In like manner the clauses of the Act relating to the constitution of the House of Commons give a certain proportionate representation to the Provinces originally constituting the Dominion, and make no reference to the increase of numbers from any addition to the territory of the Dominion.

There is in the Act no provision whatever for representation in the Senate or House of Commons of Rupert's Land and the North-Western Territory, or British Columbia.

Under these circumstances, as the question as to the constitutionality of the Act of the Canadian Parliament has been raised, and as the doubt may cause grave disquiet in the territories which have been or may hereafter be added to the Dominion, and in order also to prevent the necessity of repeated applications to the Imperial Parliament for legislation respecting the Dominion, the undersigned has the honour to recommend that the Earl of Kimberley be moved to submit to the Imperial Parliament, at its next session, a measure,

1. Confirming the Act of the Canadian Parliament, 33 Vic., cap. 3, above referred to, as if it had been an Imperial Statute, and legalizing whatever may have been done under it according to its true intent.

2. Empowering the Dominion Parliament from time to time to establish other Provinces in the North-Western Territory, with such Local Government, Legislature and constitution as it may think proper; provided that no such Local Government or Legislature shall have greater powers than those conferred on the Local Governments and Legislatures by the "British North America Act, 1867;" and also empowering it to grant such Provinces representation in the Parliament of the Dominion; the Acts so constituting such Provinces to have the same effect as if passed by the Imperial Parliament at the time of the Union.

3. Empowering the Dominion Parliament to increase or diminish, from time to time, the limits of the Province of Manitoba, or of any other Province of the Dominion, with the consent of the Government and Legislature of such Province.

4 Providing that the terms of the suggested Act be applicable to the Province of British Columbia whenever it may form part of the Dominion.

All which is respectfully submitted.

JOHN A. MACDONALD.

[After some correspondence, the Imperial Act, 34 and 35 Vic., cap. 28, was passed to give effect to the above recommendations.—G. E. L.]

An Act respecting the Establishment of Provinces in the Dominion of Canada.*

Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as "The British North America Act, 1871."

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may, from time to time, make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively, "An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada;" and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for all the purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

Memorandum of the Hon. J. Sandfield Macdonald, Attorney-General of Ontario.†

The undersigned has the honour to draw the attention of your Excellency to the necessity which exists for the settlement of the true boundary, or division line, separating the Province of Ontario from what is known as the North-West Territory. The importance of accomplishing this object was manifest to the Ontario Legislature during its last and the preceding sessions, when an appropriation was voted towards defraying the expenses which might be incurred by a Commission to be appointed for the purpose.

---

* Imp. Stat., 34 and 35 Vic., cap. 28. Assented to 29th June, 1871.

† Sess. Papers, Ont., 1873, No. 44, p. 2.

The Privy Council at Ottawa also conceiving that action should be taken by them in the matter, obtained an appropriation from the Commons for the same object. It therefore becomes only necessary that a Commission should be appointed by your Excellency and another by the Dominion Government in order that steps may be taken as early as possible, as the season is fast advancing, with a view to carry out the purpose for which the respective grants were made. It is needless to adduce arguments for urging the early ascertainment of the boundary line. The thoroughfare over which numbers of emigrants and other are making their way from Thunder Bay towards Red River requires that they should be protected *en route*, and the jurisdiction to which the authority of this Government extends ought to be clearly defined in view of that end; and the same remark would apply to that portion of the road which is beyond our limits.

The undersigned therefore respectfully recommends that your Excellency will be pleased to communicate to the Dominion Government the substance of this memorandum, and to add that this Government, when the Commissioners shall be appointed, will be prepared to agree to joint instructions to be given to them as their guide in executing the task to be assigned to them.

J. S. Macdonald.

July 14th, 1871.

The Lieutenant-Governor of Ontario to the Secretary of State, Canada.*

Government House,
Toronto, 17th July, 1871.

Sir,—I have the honour to call your attention to the necessity which exists for the settlement of the true boundary or division line separating the Province of Ontario from what is known as the North-West Territory.

The importance of accomplishing this object has been recognized both by the House of Commons and the Legislature of this Province, and appropriations made by them for defraying the expense of a Commission for that purpose, one member of which to be appointed by His Excellency the Governor-General and the other by myself.

As the season is fast advancing, it is desirable that these appointments be made at as early a date as possible.

It would be superfluous to urge the necessity of having the boundary line in question ascertained without delay.

Numbers of emigrants and others are now making their way from Thunder Bay towards Red River, and, when on the route, require to be protected.

With that view it is necessary that the limits of the territory, over which the authority of this Government extends, be clearly defined, as well as of that over which the Government for the North-West Territory holds jurisdiction.

I would add that this Government, on the appointment of the Commissioners, will be prepared to agree to joint instructions to be given them as their guide in executing the task to be assigned to them.

I have the honour to be, Sir,
Your obedient servant,

W. P. Howland.

Hon. Secretary of State (Provinces), Ottawa.

---

* Sess. Papers, Ont., 1873, No. 44, p. 3.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 20th July, 1871.

SIR,—I have the honour to acknowledge the receipt this morning of your despatch, No. 101, of the 17th instant, calling attention to the necessity which exists for defining the true boundary or division line separating the Province of Ontario from the North-West Territories.

Your despatch will be brought under the early notice of His Excellency the Governor-General in Council.

I have the honour to be, Sir,
Your most obedient servant,
J. HOWE.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 28TH JULY, 1871.†

On the application of the Government of the Province of Ontario, requesting the Dominion Government to appoint a Commissioner to act with the Commissioner of the Ontario Government, to determine the boundary line between Ontario and the North-West Territories,

The Hon. the Minister of Public Works reports that Parliament voted at its last session the sum of fifteen thousand dollars ($15,000) to pay one half of the cost of surveying the said boundary line, and recommending that a Commissioner be appointed, and that the said Commissioner be Eugène E. Taché, Esquire, of the city of Quebec.

The Committee submit the above recommendations for your Excellency's approval.

Certified.
WM. H. LEE,
Clerk, P. C.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.‡

DEPARTMENT OF SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 31st July, 1871.

SIR,—With reference to your despatch, No. 101, of the 17th instant, I have the honour to inform you that his Excellency the Governor-General in Council has been pleased to appoint Eugène E. Taché, Esquire, of the City of Quebec, to be a Commissioner to act, on behalf of the Dominion, with the Commissioner to be appointed by the Government of Ontario, to determine the boundary line between that Province and the North-West Territories.

I have the honour to be, Sir,
Your obedient servant,
J. HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C. B.,
Lieutenant-Governor, Toronto.

---

* Sess. Papers, Ont., 1873, No. 44, p. 3.

† Return, House of Commons (Canada), dated 19th March, 1881, No. 37, p. 2.

‡ Sess. Papers, Ont., 1873, No. 44, p. 4.

MINUTE OF COUNCIL, ONT., APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 19TH SEPTEMBER, 1871.*

The Committee of Council have had under consideration a communication of the Secretary of State for the Provinces, dated 31st July last, in reply to your Excellency's despatch of the 17th of the same month, in relation to the appointment of a Commission, one member of which should be appointed by the Dominion, and the other by the Ontario Government, to determine the boundary line between the Province of Ontario and the North-West Territories, in which the Secretary of State announces that Eugène E. Taché, Esquire, of the city of Quebec, has been named, on the part of that Government, as its Commissioner for that purpose, and the recommendation of the Honourable the Attorney-General, dated 18th September, 1871, in respect thereto.

The Committee advise that a Commissioner, to act for and on behalf of the Ontario Government, be appointed by your Excellency, to confer with and act in the premises with the Dominion Commissioner, and they further respectfully advise that it be an instruction to the said Commissioner to report concerning the western as well as the northern boundary of this Province, and the territory of the Dominion, and that the Honourable William McDougall, C.B., be the said Commissioner for this Province.

Certified.

J. G. SCOTT,
C. E. C.

TORONTO, 18th September, 1871.

THE ASSISTANT PROVINCIAL SECRETARY TO THE HONOURABLE WILLIAM MCDOUGALL.*

TORONTO, September 20th, 1871.

SIR,—I am commanded by His Excellency the Lieutenant-Governor, to inform you that an Order in Council has been passed to the effect that a Commissioner shall be appointed to act on behalf of this Province in the matter of the settlement of the boundary line between Ontario and the North-West Territories. Mr. Eugène E. Taché, of the city of Quebec, has been appointed Commissioner on behalf of the Government of the Dominion, and His Excellency has been pleased to name you as a Commissioner to act in conjunction with that gentleman.

I am to request that you will signify to this Department your determination as to the acceptance of His Excellency's nomination at your earliest convenience.

I have the honour to be, Sir,
Your obedient servant,

T. C. PATTESON,
Assistant-Secretary.

Hon. W. McDougall, C.B.,
Toronto.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.†

GOVERNMENT HOUSE,
TORONTO, 21st September, 1871.

SIR,—With reference to correspondence that has passed on the subject of a Commission to settle the boundary line between Ontario and the North-West Territories,

* Sess. Papers, Ont., 1873, No. 44, p. 4.
† Ibid, p. 5.

I now have the honour of informing you that I have appointed the Hon. William McDougall, C.B., etc., etc., Commissioner on behalf of this Province, to co-operate with Mr. Taché, the nominee of His Excellency the Governor-General in Council.

I have the honour to be, Sir,
Your obedient servant,

W. P. Howland.

The Hon. the Secretary of State, Ottawa.

Mr. McDougall to the Assistant Provincial Secretary.*

Toronto, September 22nd, 1871.

Sir,—I have the honour to acknowledge your communication of the 20th inst., informing me that His Excellency the Lieutenant-Governor has heen pleased to appoint me, under an Order in Council, Commissioner for the Province of Ontario, in the matter of the settlement of the boundary line between Ontario and the North-West Territories.

I beg to inform you, in reply, that I accept the appointment, and shall be ready to enter upon the duties of the Commission at any moment.

I have the honour to be, Sir,
Your obedient servant,

W. McDougall.

T. C. Patteson,
Assistant-Secretary, etc.

The Acting Under-Secretary of State to the Lieutenant-Governor.*

Department of the Secretary of State for the Provinces,

Ottawa, 26th September, 1871.

Sir,—I have the honour to acknowledge the receipt of your despatch of the 21st instant, stating, with reference to previous correspondence on the subject, that you had appointed the Hon. William McDougall, C.B., a Commissioner on behalf of the Province of Ontario, to co-operate with the Commissioner appointed by the Dominion Government to determine the boundary line between that Province and the North-West Territories.

I have the honour to be, Sir,
Your obedient servant,

G. Powell,
For the Under-Secretary.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

Report of Col. Dennis, Dominion Surveyor-General, prepared at the request of Sir John A. Macdonald.†

Ottawa, 1st October, 1871.

Remarks on the question of the boundary between the Province of Ontario and the Dominion Lands or North-West Territories.

---

* Sess. Papers, Ont., 1873, No. 44, p. 5.

†Report, Ho. of Coms. Committee, 1880, p. 1.

1. The above limit is identical with the westerly boundary of the Province of Quebec as the same was fixed by the Quebec Act in 1774.*

2. In describing the boundary of Quebec, in the Act referred to, having commenced at the Bay of Chaleurs and continued westerly to the north-west angle of the Province of Pennsylvania, it goes on in the following language: "And thence along the western boundary of the said Province (Pennsylvania) until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and *northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay.*"†

3. The above phraseology (underlined), in describing the westerly boundary of Quebec, has been, and is still, interpreted in different ways according to the private opinions or prejudices of parties.

4. Those interested in locating the boundary of Ontario as far as possible to the west, argue that the term "*to the banks of the Mississippi and northward to the southern boundary of the territory, etc., etc.,*" means that in going northward, the banks of the Mississippi are to be followed to its source, and that they were in fact so intended in the Act.

5. On the other hand, it is contended, in the interest of the Dominion, that the language "*to the banks of the Mississippi,*" simply means to the banks of the said river at the point where it is joined by the Ohio, and the words which follow, "*and northward to the southern boundary, etc.,*" was intended to be construed as upon a *due north line.*

6. There is no evidence forthcoming which would show clearly what was intended by the Act,‡ and in considering the question, therefore, we are left to draw conclusions from co-relative circumstances; a consideration of these have led the writer to believe that a due north line from the forks of the Ohio was intended as the westerly boundary of Quebec, in support of which he would submit:—

7. Had such not been the intention, that is to say, had it been intended that the Mississippi River should be the west boundary, inasmuch as the evident intention to make the Ohio River the southern boundary, west of Pennsylvania, was thus definitely expressed: "*and along the banks of the said river westward to the banks of the Mississippi;*" then such intention would have been expressed in corresponding terms, that is to say, the boundary would have been described as "*northward along the banks of the Mississippi, etc., etc., etc.*"

8. This argument has the more force from the fact stated as follows:—The Bill, as submitted to the House, described the boundaries as "heretofore part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers, etc., etc."

9. Mr. Burke, in the interests of the Provinces of New York and Pennsylvania, moved in amendment (the House being in Committee) to substitute the following for the boundary, viz.: after North America "by a line drawn, etc., etc., etc., *to the north-west part of the boundary of Pennsylvania, and down the west boundary of that Province by a line drawn thence till it strike the Ohio.*"

The above words were inserted.§

10. Then followed another amendment, which was adopted, and after "*Ohio*" should be inserted "*and along the bank of the said Ohio.*"

Now, had the *banks of the Mississippi* been intended to be adhered to in going "northwards," is it not clear that the necessity of an amendment to that effect would similarly have made itself evident at the time, and does not the absence of any reference to the

* [See the subseq ient notes (within brackets) to this Report.—G. E. L.]

† See paper marked E.

‡ [Col. Dennis seems to have overlooked the evidence which is afforded of the opposite view, by the preamble of this Act of 1774; by the debate thereon in Parliament; by the Act of 1791; the message to Parliament, referred to in that Act; the Imperial Order in Council of the same year; the Paper mentioned in the Order; the Royal Commissions; the proclamation of General Clarke, etc., etc. For these see Book of Arbitration Documents, pp. 3, 4, 388, 411, 46-52, 389-390, 27.—G. E. L.]

§ C. Debates, p. 123, and Journals of House of Commons, No. 34.

point, or discussion whatever upon it, go to show that "northwards" was intended to be on a due north line?

11. The map which was used in the House of Commons to illustrate the question of the boundaries of Quebec in the debate on the Act, is said to have been one known as Mitchell's map, dated February 13th, 1755.

12. It is stated that there were two editions of this map, the first one being withdrawn on the publication of the second, *which latter contained "numerous important corrections, but the date was not altered.**

13. The only copy of Mitchell's map available is in the library here, and, on inspecting the River Mississippi on it, we find that the course of that river is taken up abruptly at a point in 47° 12′ north latitude and 101° 30′ west longtitude, at which point we further find on the map the following note by the author:

"The head of the Mississippi is not yet known. It is supposed to arise about the 50th degree of latitude and the west bounds of this map," etc., etc., etc.

14. Now it is not at all probable that with the uncertainty asserted to exist on the map itself used by the House of Commons at the time the boundaries were debated and settled, with regard to the source and direction of a great part of the course of the Mississippi, that the House intended its banks as the boundary of Quebec.

15. Such a theory, leaving as it would, one of the principal boundaries of the Province in great uncertainty, would be entirely inconsistent with the minuteness and precision of language insisted on it settling the Ohio as the southern boundary.†

16. Taking the strictly legal construction of the description, it is claimed that the direction expressed as "northwards" is *upon a due north line*, in favour of which see the decision on this specific case in the judgment of Chief Justice Sewell‡ in connection with the trial of Charles de Reinhardt in Quebec, 1817, for murder committed on the Winnipeg River.§

17. The northerly boundary of Ontario, between it and the Dominion lands, is undoubtedly the southern boundary of the Hudson's Bay Company's possessions. It is possible that some difference of opinion may arise as to where this boundary should be located on the ground.

18. The Charter of the Hudson's Bay Company, dated 2nd May, 1670 (see paper marked F), described their grant as "extending over and including all lands and territories drained by the waters emptying into Hudson's Bay."‖

---

* See Wright's Cavendish Debates. (Note following preface.)

†[With reference to the arguments contained in paragraphs numbered from 7 to 15, from what had passed in Parliament, it may be noted that the Bill, as it came down from the House of Lords, was admittedly intended to give as the western boundary the banks of the Mississippi, and not a line drawn due north from the confluence of the Mississippi and Ohio; that the reported debates in the Commons give no indication whatever of an intention to change the western boundary, but the contrary; that the description of the western boundary was not altered; and that the supposed change of intention has no other foundation than the supposed effect which the amended language, introduced with reference to the southern boundary, has in varying the grammatical meaning of the language in which the western boundary was before described.

As to what is said as to the "uncertainty" of the Mississippi as a boundary, it may be noted that such a boundary had the fixity and certainty which belong to the channel of a great river, whose course required only to be traversed in order to be ascertained; that, notwithstanding the so-called uncertainty, this river had been established by the Treaty of Paris, 1763, as the westerly boundary of the British and the easterly boundary of the French possessions in that quarter; and was again established by the Treaty of 1783 as the western boundary of the United States.—G. E. L.]

‡[This judgment was not acted upon; and the prisoner, though found guilty and condemned to death, was discharged. It may also be noted that Upper Canada was no party to the proceeding in which the decision was arrived at; that the then Chief Justice of Upper Canada (Powell) did not subscribe to the decision, but was of opinion that the western limit of Upper Canada was co-extensive with that of French Canada. (See this opinion in "Papers relating to the Red River Settlement," printed in Sess. Papers, Ho. Coms., Eng., 1819, Vol. 18, p. 285.) In fact, the decision in the De Reinhardt case was never recognized in Upper Canada before its union with Lower Canada, nor by the Province of Canada afterwards. (See Treaty with Indians of Lake Superior, Book of Arb. Docs., p. 23, statement of lands patented, at p. 322, and statement of mining licenses, etc., at p. 409 of same book; see also *ib.*, pp. 254, 269-271.) Since that decision a mass of evidence has come to light which further supports the contention of Ontario, and was not before the court in the De Reinhardt case.—G. E. L.]

§ See Report of trial, in Library, House of Commons, Ottawa.

‖ [This is incorrect. There are no such words in the Charter.—G. E. L.]

19. The boundary in such case would be the ridge dividing the water-sheds north and west of Lake Superior, which intersects the Dawson route at height of land portage, and crosses the international boundary between South Lake and Gunflint Lake.

20. It may be argued on behalf of Ontario that the dividing ridge which should bound the Hudson's Bay Company's possessions on the south is that which may be described as the northerly section of the *"range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flow-into Lake Winnipeg, crossing the Nelson River at Split Lake, or Lac des Forts, etc.;" and it will probably be urged in favour of this view that the grant to the Company only covered "such lands and territories as were not already actually possessed by the subjects of any other Christian Prince or State," and that inasmuch as the country to the south of the range of high lands last described was considered to belong to France, that therefore King Charles would give no title in what he did not own, and certain old maps (see B and C) are referred to in support of this view.

21. It is not important to discuss this view, if it is conceded that a due north line from the forks of the Ohio bounds Ontario to the west; as in such case the height of land would be intersected just north-west of Lake Nipigon at a point about which there can be very little dispute.

22. If, on the other hand, the contention of Ontario is allowed, that is to say, that the banks of the Mississippi should be followed to their source, and that a line should be drawn thence due north to intersect the height of land alluded to in paragraph 20, then the westerly boundary would extend over 300 miles north of the Lake of the Woods, and the Province would be made to include a territory which, as regards form and extent, could not, in the opinion of the undersigned, have been at all contemplated or intended at the time of passing the Quebec Act.

23. But the undersigned assumes, on the strength of opinions to such effect, given by eminent counsel to whom the question had been submitted, that the "southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay" was, and is, the height of land bounding the watershed of the basin of Hudson's Bay;† and, even admitting that the banks of the Mississippi, to the source of the said river, were intended by the Act, a due north line from the latter would, in the course of a very few miles, intersect such height of land, as the same is in the immediate vicinity of the source of the Mississippi, and between it and the Lake of the Woods, the waters in which latter drain into Hudson's Bay.

24. The only territory, therefore, affected by the question of the due north boundary from the forks of the Ohio, as against the Mississippi, as the boundary, is that coloured yellow on the tracing marked A herewith, shown as contained between the due north line from the forks of the Ohio and the curved line defining the height of land to the south and west; because, even construing the west limit of Ontario in the Quebec Act as the banks of the Mississippi, and a line due north from the source of that river to the height of land forming the southern boundary of Hudson's Bay Company's territory, such description would only take effect where, and to the east and north of where, such height of land crosses the international boundary between Gunflint and South Lakes, as before mentioned, confirming, in fact, the western and northern boundaries of the Province, in

*See Report, Commissioner Crown Lands, 1857.

†[Other eminent counsel had given the contrary opinion. The opinions of the counsel referred to by Mr. Dennis appear to have been founded on the incorrect statement, which the Company had been in the habit of making, that the Company had always claimed and exercised dominion, as absolute proprietors of the soil, to the height of land referred to. (See Book of Arb. Docs. pp. 255, 288.) It is now clear, and indeed is admitted by the Company, that until long after 1763, the date of the cession of Canada to Great Britain, the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay, and two factories not very distant. (See Book Arb. Docs., pp. 121, 252, 395-6, 399, 400, 412, 414-15.) And as to the region drained by the waters that flow into Lake Winnipeg, of which the French of Canada were in actual possession from a very early date, the Company, by its servants or agents, did not set foot within it for more than a century after the date of the Charter, and then only as enjoying the right in common with all other British subjects.—G. E. L.]

accordance with their description by Bouchette,* and which usage had established up to the acquisition of the territories in 1869.

25. Looking at the very irregular character of the boundary which would be formed by following the ridge between the watersheds, it is suggested by the writer, whether it would not be better for Ontario and the Dominion to agree on a conventional boundary, for instance, in some way as shown on tracing lettered C.

26. The saving, in such case, in the expense of surveying and defining the boundaries on the ground, would be at least one-half; besides which, making the limits of this regular character, would facilitate the laying out of the lands adjoining them in future times.

J. S. Dennis.

Ottawa, October 1st, 1871.

Papers and maps accompanying the preceding remarks, submitted to the Hon. the Minister of Justice.

A.—Tracing of Cotton's map (modern), showing sources and course of the Mississippi.

B.—Tracing of Jeffrey's map of 1760.

C.—Tracing of De Lisle's map of 1740.

D.—Tracing of (reduced scale) Mitchell's map of 1755.

E.—Extract—Quebec Act, 1774.

F.—Extract—Charter H. B. Co., 1670.

G.—Tracing part of Devine's map, north of Lake Superior (to show conventional boundary proposed).

H.—Extract—Bouchette's History of Canada, describing boundaries (1832).

I.—Extract—Opinion of Judges on boundary, from De Reinhardt's trial.

K.—Extract—Commission to Guy Carleton, 1786.

L.—Extract—King's Proclamation, 1763.

Report of a Committee of the Privy Council, approved by the Governor-General on the 28th November, 1871.†

On a memorandum dated 25th November, 1871, from the Hon. the Secretary of State, submitting that applications have been made to him for mining licenses and patents for land in the neighbourhood of Lake Shebandowan, and in places about the head of Lake Superior, and recommending that, pending the locating of the boundary line between the North-West Territory and the Province of Ontario, no action be taken upon these or any similar applications; and further recommending that the Lieutenant-Governor of Ontario be informed of the course proposed to be taken by your Excellency's Government, and that it be suggested that the Government of that Province should, in like manner, refrain from granting patents or mining licenses in the region of country about the head of Lake Superior and Lake Shebandowan until after the boundary line

*[Mr. Bouchette's opinion is not wholly in favour of Colonel Dennis's view. For example, he copies from General Clarke's Proclamation, without objection or comment, the words following: "From the head of the said lake (Temiscamingue) by a line drawn due north until it strikes the boundary line of Hudson's Bay; including all the country to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." (See his Topographical Description, London, 1815, quoted in Book Arb. Docs., p. 390.) Again, speaking of Upper Canada, the same author says:—"On the west and north no limits have been assigned to it; therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans." (Quoted at p. 391 of Arb. Docs.) On his map of Upper Canada, 1815, he shows the Province as extending beyond the height of land both on the north and to the west—on the west as far at least as the north-west point of the Lake of the Woods.—G. E. L.]

† Sess. Papers, Ont., 1873, No. 44, p. 6.

shall have been so located; and further submitting that it is of much consequence that the ascertaining and fixing on the ground of the boundary line in question should be as far as possible expedited:

The Committee concur in the above recommendations and submit the same for your Excellency's approval.

Certified.

Wm. H. Lee,
Clerk, P. C.

The Hon. Secretary of State for Canada.

The Secretary of State to the Lieutenant-Governor.*

Department of the Secretary of State for the Provinces,
Ottawa, 30th November, 1871.

Sir,—I have the honour to transmit to you herewith a copy of an Order of His Excellency the Governor-General in Council, on the subject of the granting mining licenses and patents for lands in the neighbourhood of Lake Shebandowan and in places about the head of Lake Superior.

May I request that you will have the goodness to bring the matter under the early notice of your Government, and communicate to me their views thereon for the information of His Excellency the Governor-General in Council.

I have the honour to be, Sir,
Your most obedient servant,

J. Howe,
Secretary of State for the Provinces.

Hon W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

Minute of Council, approved by the Lieutenant-Governor, on the 4th January, 1872.†

The Committee of Council have had under consideration the communication of the Honourable the Secretary of State for the Provinces, dated 30th November, 1871, transmitting a copy of a report of the Committee of the Privy Council of Canada, approved by His Excellency the Governor-General in Council on the 28th November, 1871, wherein it is recommended that, pending the locating of the boundary line between the North-West Territory and the Province of Ontario, no action should be taken upon applications for mining licenses and patents for land in the neighbourhood of Lake Shebandowan and in places about the head of Lake Superior by the Dominion Government, and suggesting that the Government of Ontario should in like manner refrain from granting patents or mining licenses in the said region until after the boundary line aforesaid should have been established.

The Committee advise that the Secretary of State be informed that the said communication and enclosure have been referred to the Honourable the Commissioner of Crown Lands and that immediately upon his reporting in respect thereof the matter will be taken into consideration by your Excellency; and further that concurring in the statement contained in the said report of Council that it is of so much consequence that the ascertaining and fixing on the ground of the boundary line in question should be as far as

* Sess. Papers, Ont., 1873, No. 44, p. 5. † *Ibid*, p. 6.

possible expedited, your Excellency is desirous that the draft instructions proposed to be given to the Commissioner should be at the earliest possible moment submitted for the consideration of your Excellency.

Certified.

J. G. Scott,
C. E. C.

4th January, 1872.

The Lieutenant-Governor to the Secretary of State.*

Government House,
Toronto, 6th January, 1872.

Sir,—With reference to your despatch dated 30th November, covering a copy of a report of a Committee of the Privy Council making certain recommendations as to the issue of patents in the neighbourhood of Lake Shebandowan, and urging the early settlement of the boundary question, I now have the honour to inform you that the subject has been referred to the consideration of the Commissioner of Crown Lands in this Province, and that as soon as his report upon it can be obtained the Executive Council will come to a decision in the matter. In the meantime, I concur in the view expressed in the Minute of the Privy Council, that the boundary line in question should be ascertained and fixed with all possible speed, and, to prevent unnecessary delay, would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed, be transmitted for the consideration of the Government of this Province at the earliest moment.

I have the honour to be, Sir,
Your obedient servant,

W. P. Howland.

The Hon. the Secretary of State for the Provinces,
Ottawa.

The Secretary of State to the Lieutenant-Governor.*

Department of the Secretary of State for the Provinces,
Ottawa, 11th January, 1872.

Sir,—I have the honour to acknowledge the receipt of your despatch of the 6th instant, in reply to mine of the 30th November last, in reference to the locating of the boundary line between the North-West Territory and the Province of Ontario, near the head of Lake Superior, and suggesting that a draft of the instructions given by the Dominion Government to the Commissioner appointed on its behalf, be forwarded to your Government.

I have the honour to be, Sir,
Your obedient servant,

Joseph Howe.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

---

*Sess. Papers, Ont., 1873, No. 44, p. 7.

THE ACTING ASSISTANT PROVINCIAL SECRETARY TO MR. MCDOUGALL.*

PROVINCIAL SECRETARY'S OFFICE,
TORONTO, March 5th, 1872.

SIR,—Adverting to the communication from this Department, under date 20th September last, informing you that His Excellency the Lieutenant-Governor had been pleased to appoint you Commissioner on behalf of this Province, in the matter of the settlement of the boundary line between Ontario and the North-West Territories, I have now the honour, in pursuance of a conversation that took place some time ago between the President of the Council and yourself, to request you to forward, at your earliest convenience, a detailed report upon the whole subject of the North-West boundary, also a report stating your action under the Commission, with the result of any conference you may have had with the Dominion authorities. You will also be good enough to state, for the information of His Excellency the Lieutenant-Governor, your views of the probable action of the Commissioner appointed on behalf of the Dominion, and to offer any suggestions you may consider it desirable to make as to the conduct and probable results of the Commission.

I have the honour to be, Sir,
Your obedient servant,

I. R. ECKART,
Acting Assistant Secretary.

Hon. W. McDougall, C.B.,
Toronto.

MR. MCDOUGALL TO THE PROVINCIAL SECRETARY.†

March 9th, 1872.

SIR,—I have the honour to acknowledge your communication of the 5th inst., in which you refer to a conversation between the Honourable the President of the Council and myself on the subject of the "North-West" Boundary, and (1) request me in pursuance of that conversation to forward a detailed report upon the whole subject, and (2) also to report my action under the Commission of the 20th of September, with the result of any conference I may have had with the Dominion authorities. I observe that you further request me (3) to state, for the information of His Excellency, my views of the probable action of the Commissioners appointed on behalf of the Dominion, and (4) to offer any suggestions I may think desirable as to the conduct and probable result of the Commission.

I have the honour to state in reply that I have not yet received any instructions from His Excellency as to the time, place, or manner in which I should proceed to execute the commission entrusted to me.

The letter of appointment merely informed me that the object of the Commission was "the settlement of the boundary between Ontario and the North-West Territories," and that Eugène E. Taché, Esq., had been appointed on behalf of the Dominion, and that His Excellency had named me to act in conjunction with him.

The late Attorney-General, Hon. J. S. Macdonald, on one or two occasions expressed to me verbally his opinion as to the scope of the inquiry and the nature and effect of the report which the Commissionnrs were expected to make, but gave no official directions in the matter.

I have not yet been put in communication with the Commissioner appointed on behalf of the Dominion, and am therefore unable to report anything as to his views.

But having twice visited Ottawa in the hope of meeting him, and having conferred

---

* Sess. Papers, Ont., 1873, No. 44, p. 7. † *Ibid.*, p. 8.

with certain members and officers of the Dominion Government on the subject of the Commission, I have formed an opinion as to the nature of the instructions prepared for him, which I beg to submit in the form of a confidential memorandum. I also beg to refer to this memorandum for any further information under the second and third heads mentioned in your letter.

I have collected the greater part of the materials for a report which I expected to make in conjunction with the Commissioner for the Dominion, on that part of the boundary between the Province of Ontario and the Territories of the Dominion which crosses the line of communication between Lake Superior and the new Province of Manitoba, but I regret that certain maps ordered from England, and which, in my judgment will be very important in the event of a serious difference of opinion between the Commissioners or the respective Governments as to this part of the boundary, have not yet reached me.

I presume that the detailed report upon the whole subject of the North-West boundary which you have asked me to forward, is not the final report under my commission, but a preliminary statement for the information of His Excellency of the present position of the question, and the opinions I have formed from such documents, maps, and proofs as are accessible to me, of the actual location of the north-western boundary of Ontario, or as to the manner in which it must be determined.

I shall have the honour in two or three days to submit a report of the character referred to in my conversation with the President of the Council, in the form of a preliminary memorandum, which I trust will meet the approval of His Excellency.

The 4th and last point mentioned in your letter, viz., an invitation to offer any suggestions I may think desirable "as to the conduct and probable results of the Commission" may be conveniently disposed of in this communication.

Having reason to believe, as will appear in the confidential memorandum herewith, that the Commissioner for the Dominion will take the ground that a line *due north* from the junction of the "Ohio" with the "Mississippi" is the legal western boundary of Ontario, or that the *height of land* west and north of Lake Superior is the utmost western limit of the Province; and being of opinion myself that the limit is much further west, I do not think we shall be able to agree upon a joint report, or that the respective Governments will adopt, without protracted and perhaps angry discussions, the view of either party; I have therefore suggested in a friendly and unofficial way to members of the Dominion Government, as well as to the late Attorney-General of Ontario, the expediency of appointing, before the Commissioners begin their discussion, a *third* person of ability and position, unconnected with Canada, to act as umpire in case of dispute, and the giving to the report of the Commission thus constituted the character of an *award*, subject, of course, to the final approval of Parliament.

So far as I could judge, both Sir J. A. Macdonald and Sir George Cartier, to whom I made the suggestions, viewed it favourably.

I respectfully recommend, in answer to the invitation in your letter, the expediency of a proposition by His Excellency the Lieutenant-Governor of Ontario to the Governor-General for the reconstruction of the boundary Commission in the manner suggested. I need not point out the serious inconvenience and embarrassments which would probably follow a disagreement between the Commissioners, concurred in by the respective Governments. Experience teaches but one lesson in these cases, viz., that it is easier and safer to agree upon a reference than upon the details of a settlement, and that two referees are quite as likely to disagree as the original contestants.

I have the honour to be, Sir,
Your obedient servant,

WM. McDOUGALL.

The Honourable the Provincial Secretary,
Toronto.

Report of the Minister of Justice.*

Ottawa, 11th March, 1872.

Reference having been made to the undersigned of the Order in Council, of the 28th November last, on the subject of applications for mining locations, and patents for land in the neighbourhood of Lake Shebandowan, and about the head of Lake Superior, and also of the despatch of the Lieutenant-Governor of Ontario on such Order in Council, he begs leave to report:—

That the Lieutenant-Governor, in his despatch of the 6th January, states as follows:—"In the meantime I concur in the view expressed in the Minute of the Privy Council, that the boundary line in question should be ascertained and fixed with all possible speed, and to prevent unnecessary delay would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed, be transmitted for the consideration of the Government of this Province at the earliest moment."

The undersigned with the view, therefore, of meeting the desire expressed by the Lieutenant-Governor, and after consultation with Surveyor-General Dennis,† begs leave to recommend that a copy of the draft instructions, hereunto annexed, be transmitted to the Government of Ontario.

All of which is respectfully submitted.

John A. Macdonald.

Instructions to the Commissioner for the Dominion.‡

Draft of Instructions to be given to the Commissioner appointed to act on behalf of the Dominion of Canada in the survey and location of the boundary line between the North-West Territories and the Province of Ontario, in conjunction with a Commissioner to be appointed by the Government of Ontario.

The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., cap. 83, known as the "Quebec Act," and is described in the said Act as follows, that is to say: Having set forth the westerly portion of the southern boundary of the Province as extending along the River Ohio "*westward to the banks of the Mississippi,*" the description continues from thence (*i.e.*, the junction of the two rivers) "*and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*"

Having determined the precise longitude west of Greenwich of the extreme point of land marking the junction of the north and east banks respectively of the said rivers, you will proceed to ascertain and define the corresponding point of longitude of the intersection of the meridian passing through the said junction with the international boundary between Canada and the United States.

Looking, however, at the tracing enclosed, marked A, intended to illustrate these instructions, it is evident such meridian would intersect the international boundary in Lake Superior.

Presuming this to be the case, you will determine and locate the said meridian, the same being the westerly portion of the boundary in question, at such a point on the northerly shore of the said lake as may be nearest to the said international boundary, and from thence survey a line due south to deep water, marking the same upon and across any and all points or islands which may intervene; and from the point on the main shore, found as aforesaid, draw and mark a line due north to the southern boundary of the Hudson's Bay Territory before mentioned.

---

* House of Commons Return of 19th March, 1881, No. 37, p. 4.

† [See the Report of Mr. Dennis on the Boundaries, 1st October, 1871, *ante*, p. 209.—G. E. L.]

‡ Sess. Papers, Ont., 1873, No. 44, p. 15.

This will complete the survey of the westerly boundary line sought to be established.

You will then proceed to trace out, survey and mark, eastwardly, the aforementioned "*southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*"

This is well understood to be the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the great lakes, and forming the northern boundary of Ontario; and the same is to be traced and surveyed, following its various windings till you arrive at the angle therein between the Provinces of Ontario and Quebec, as the latter is at present bounded; having accomplished which, the service will have been completed.

Your requisition for such assistance, scientific and otherwise, as may be necessary to enable you to determine the necessary longitude with precision, and to effect the practical surveying operations in the field and for such instruments as may be required will receive due consideration.

Further instructions relating to the character of the boundary marks to be erected, and conveying other information which you will probably require will be duly sent you.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 12TH MARCH, 1872.*

The Committee have had before them a memorandum, dated 11th March, 1872, from the Honourable the Minister of Justice, stating that reference having been made to him of the Order in Council of the 28th November last, on the subject of applications for mining locations and patents for land in the neighbourhood of Lake Shebandowan, and about the head of Lake Superior, and also of the despatch of the Lieutenant-Governor of Ontario on such Order in Council; he reports,

That the Lieutenant-Governor in his despatch of the 6th of January, states as follows:—"In the meantime I concur in the views expressed in the Minute of the Privy Council that the boundary line in question should be ascertained and fixed with all possible speed, and to prevent unnecessary delay, would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed be transmitted for the consideration of the Government of this Province at the earliest moment."

That with the view, therefore, of meeting the desire expressed by the Lieutenant-Governor, and after consultation with Surveyor-General Dennis, he, the Minister of Justice, recommends that a copy of the draft instructions annexed to his memorandum be transmitted to the Government of Ontario.

The Committee submit the above recommendations for your Excellency's approval.

Certified.

WM. H. LEE,
Clerk P.C.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 14th March, 1872.

SIR,—With reference to your despatch, No. 138, of the 6th January last, I have the honour, in compliance with the request therein contained, to transmit to you here-

* House of Commons Return, March 19, 1881, No. 37, p. 5.

† Sess. Papers, Ont., 1873, No. 44, p. 14.

with a copy of the instructions to be given to the Commissioner appointed to act on behalf of the Dominion of Canada in the survey and location of the boundary line between the North-West Territories and the Province of Ontario.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR. *

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,

OTTAWA, 15th March, 1872.

SIR,—With reference to my letter of the 14th instant, I have the honour to transmit herewith a tracing which, it is requested, may be substituted for that which accompanied the draft of instructions to be given to the Commissioner appointed by the Dominion in the survey and location of the boundary line between the North-West Territories and the Province of Canada, a copy of which was enclosed in my letter above referred to.

May I request that you will have the goodness to cause the tracing for which the enclosed is substituted to be returned to this Department.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

[*Memorandum.*—Copy of a tracing, showing boundary line between Dominion and Province of Ontario.]

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.†

GOVERNMENT HOUSE,
TORONTO, 19th March, 1872.

SIR,—I have the honour to acknowledge the receipt of your despatches of 14th and 15th instant, enclosing tracings with reference to the boundary line between this Province and the North-West Territories, and to return herewith, as requested, the tracing enclosed in your former despatch.

I have the honour to be, Sir,
Your obedient servant,

W. P. HOWLAND.

Hon. Secretary of State (Provinces), Ottawa.

---

* Sess. Papers, Ont., 1873, No. 44, p. 15. † *Ibid.*, p. 16.

THE ACTING ASSISTANT PROVINCIAL SECRETARY TO MR. MCDOUGALL.*

PROVINCIAL SECRETARY'S OFFICE,
TORONTO, 19th March, 1872.

SIR,—I am commanded to request that you will, at the earliest possible moment, submit to the Government the further report promised by your last communication. It is extremely important that the Government should receive this report as soon as possible.

I have the honour to be, Sir,
Your obedient servant,

I. R. ECKHART,
Acting Assistant Secretary.

Hon. William McDougall, C.B.,
etc., etc., etc., Toronto.

MEMORANDUM OF MR. MCDOUGALL.†

PRELIMINARY MEMORANDUM, for the information of the Lieutenant-Governor of Ontario, on the subject of the western boundary of the Province.

The undersigned, appointed a Commissioner for the Province of Ontario to act in conjunction with a Commissioner on behalf of the Dominion, "in the matter of the settlement of the boundary line between Ontario and the North-West Territories," has the honour, in compliance with the request of the Provincial Secretary, communicated to him by letter, bearing date the 5th March, 1872, to submit the following memorandum upon the subject of the "North-West Boundary."

As the undersigned has not yet been put in communication with the Commissioner on behalf of the Dominion, he is unable to submit a report in conjunction with that officer.

A preliminary statement of his own views as to the true position of the western boundary line of the Province, and a brief reference to the authorities and proofs which he has thus far been able to collect in support of the conclusions at which he has arrived, will probably meet the wishes of the Government as expressed in the letter of the 5th inst.

It will be convenient to consider, in the first place, the western boundary as distinguished from the north-western or northern boundary of the Province.

There are *four* possible lines, any of which, it may be contended with more or less plausibility, is the western boundary of Ontario.

1. The meridian of 88° 50′ west from London, or a line *due north* from the mouth of the Ohio River.

2. A line commencing at the height of land, west of Lake Superior, at the international boundary, and following the watershed of that lake, in a north-easterly direction, to the southern limit of Rupert's Land, wherever that may be found.

3. A line from "the most north-western point of the Lake of the Woods," northwards to the southern limit of Rupert's Land.

4. A line northward from the source of the Mississippi River to the southern limit of Rupert's Land.

There is at least a difference of 6° of longitude between the first, or most eastern, and the last, or most western of these lines. In other words, the adoption of the last mentioned line would give to the Province three hundred miles of territory on the west, which would be cut off by the adoption of the first line, including Thunder Bay, and nearly all the mineral lands which have been surveyed or sold in that neighbourhood.

---

* Sess. Papers, Ont., 1873, No. 44, p. 16. † *Ibid.*, p. 9.

(1) It is contended by some that the first, or Ohio River meridian, is the true legal boundary of Ontario on the west, because the Imperial Act of 1774, known as the Quebec Act, defined the boundary of Canada after it reached the north-west angle of the Province of Pennsylvania as follows :—

"And thence along the western boundary of the said Province (of Pennsylvania), until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay."

If by the word "*northward*" the Imperial Parliament meant *north*, or *due north*, (as the Court of King's Bench for Lower Canada held in the trial of De Reinhardt in 1818), then the meridian of 80° 50′ (or whatever the meridian of the right bank of Ohio at its junction with the Mississippi may be ascertained to be), will be the line which in 1774 formed the western boundary of Canada.

In the opinion of the undersigned, the word "northward," in the Act of 1774, does not mean, and was not intended to mean either "north" or "due north," but "northerly" or "northward," along the banks of the Mississippi River to the southern boundary of the territory granted to the Hudson's Bay Company, as will be hereafter shown.

(2) The "height of land" limit would take the line about two degrees further west, starting from the present international boundary, and it would then run in a north-easterly direction for about two hundred miles before intersecting the meridian 88° 50′, the supposed limitary line of 1774.

This may be designated the Hudson's Bay Company's line, as the only authority for it is to be found in the documents and maps emanating from them. It has never, as the undersigned believes, been recognized in any Act of Parliament, or by any Court of Law, nor in any royal proclamation as the western boundary of Canada. It has always been rejected by the Canadian Government as a mere assumption, or rather *usurpation*, on the part of the Company. When, after the union of the Hudson's Bay Company with the North-West Company of Canada, the new monopoly adopted the ingenious and convenient theory that the Charter of 1670 included all the North-Western Territories watered by rivers and lakes falling ultimately into Hudson's Bay, they reconstructed their maps, and laid claim to the whole country between the watershed of Lake Superior and the Rocky Mountains. If it can be proved that this claim of the Company, under their charter, was a legal and valid claim, then the Act of 1774, admitting that the word "northward" was meant to designate the line of the Mississippi, would not carry the western boundary of Canada beyond the height of land referred to. "The southern boundary of the territory granted" to the Hudson's Bay Company would on this theory, have been met with in the now State of Minnesota, about 100 miles south of the present international boundary.

That this was not the construction put upon the charter in 1774, either by the Imperial Government, or by the Company, can be easily shown. All the maps of that period, even those issued by the Company, placed the southern boundary of Rupert's Land (on the line of the Mississippi), to the north of the Lake of the Woods, and therefore beyond the watershed of Lake Superior.

(3) The line from the north-western point of the Lake of the Woods will be more conveniently discussed after considering the Mississippi line.

(4) The contention that the Mississippi River formed the western boundary of Canada from the passing of the Act of 1774, to the Treaty of Paris (acknowledging the independence of the United States) in 1783, is sustained by the following (among other) facts, proofs, and considerations :

a. The Act of 1774, as already stated, describes the western boundary of Canada. That Act is not as explicit or unambiguous as it might have been. The undersigned thinks he has discovered both the cause of the ambiguity and the means of removing it.

In consequence of the rigid enforcement of the standing order of the House of Commons against strangers, and the printing or publishing of the speeches of members, when the Act of 1774 was passed, no report of the debates which it evoked could be found prior to 1839. In that year (1839) Mr. Wright, editor of the Parliamentary History of England, published an interesting and remarkable report of the debates on the Quebec

Government Bill of 1774, taken in shorthand by Sir Henry Cavendish, who was a member of the House of Commons at the time. It was found in the British Museum among the Egerton manuscripts, and is of undoubted authority. From these debates it appears that the Quebec Bill was first carried through the House of Lords. It came down to the Commons and was there proposed by Lord North, who explained the reason for extending the limits of the Province of Quebec, as fixed by Royal Proclamation in 1763. He mentions expressly "the country westward of the Ohio to the Mississippi, and a few scattered posts to the west," as having been added in order that "there should be some government" for the settlers and traders in these distant countries. (*Cavendish Debates*, pp. 9, 184.) The description in the Bill, as framed by the Government and carried through the Lords, was in these words :—

"Be it enacted that all the said territories, islands and countries" (referred to in the preamble), "heretofore part of the territory of Canada in North America, extending southward to the banks of the River Ohio, *westward to the banks of the Mississippi*, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, etc., be, and they are hereby during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec," etc.

This mode of describing the bounds of the enlarged Province of Quebec is explicit enough. The intention of the Government to make the Mississippi the western limit of the Province does not admit of doubt. Why was the language of the description altered in the Act as finally passed? The debates in the Committee show that it was done at the instance of Mr. Edmund Burke, who was English agent for the Province of New York, and was apprehensive that some portion of that Province might be transferred to Quebec by the description as it stood in the Bill. Lord North, to satisfy Mr. Burke and his clients, consented to an alteration by which a *line* of boundary was substituted on the south for the indefinite terms of the Bill. As no private interests were affected by the proposed western or north-western boundary, that part of the original description was allowed to remain. The amendment was made in haste, and, as often happens, without any one at the moment noticing its incongruity with the former mode of description. Sir Henry Cavendish gives us the following account of the amendment :—

"The first clause being read, there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Baker, and Sir Charles Whitworth, went up stairs in order to settle it, while the House was supposed to be proceeding on it. The House continued for at least half an hour, doing nothing in the meantime. The difference was whether the tract of country not inhabited should belong to New York or Canada. At five o'clock Mr. Burke returned with the amendments, some of which were agreed to, others not." (*Cavendish Debates*, p. 253.)

Throughout the debates no objection was made to the Mississippi as the *western* boundary. There is no evidence of an intention to alter that boundary either by the Government or the Committee, and the conclusion seems irresistible that Parliament, as well as the Government, *intended* that the Mississippi should bound the Province on the west. The word "northward" (though its meaning in the Act is different from its meaning in the Bill) is not inconsistent with that intention. The Mississippi, as delineated on the maps of that date, is nearly due north for about 500 miles above the mouth of the Ohio. It forms exactly that kind of boundary for which Mr. Burke contended. "Nothing," says he, "can be more geographically distinguished than water and land. This boundary is physically distinguished ; it is astronomically distinguished." (Referring to the parallel of 45°, which had been determined by Commissioners, at the head of Lake Champlain.) "We have everything that geography, astronomy and general convenience, stronger sometimes than either, can give, to make this boundary definite." (*Cavendish Debates*, p. 194.)

b. In framing the Treaty of Paris a few years later, the Imperial Government recognized the Mississippi as an existing territorial boundary. All the country east of that river, and south of a line drawn through the middle of the Great Lakes to the most north-western point of the Lake of the Woods, was surrendered to the United States. All the country *west* of the Mississippi, extending south to the 31° of north latitude, and east to the Atlantic Ocean, was left to its former owners. The Mississippi was supposed at

that time to take its rise to the west and north of the Lake of the Woods. (See *Bowen's, Mitchell's*, and other maps by Royal Geographers, 1775 to 1783.)

c. The construction put upon the Act of 1774 by the Court of King's Bench of Lower Canada in De Reinhardt's case, cannot now be regarded as an authority. The Court admitted that the question of boundary was brought before them "incidentally." They concluded their judgment on the point as follows:—

"The power of deciding finally is, however, at home. The question will be taken before the King and his Council, and on deciding the limits of Upper Canada, they will either confirm or reverse our decision according as we have done right or wrong, so that as to any consequences that may result from our error, if error we have committed, they will be obviated by the superior authority to whom the question is to be referred."

De Reinhardt was charged with murder, and the Court, holding that the place of the crime (some part of the Winnipeg River) was beyond the limits of Upper Canada, asserted their jurisdiction under the Act 43 Geo. III., c. 138, and convicted the prisoner. He was sentenced to be executed, but the sentence (the case being referred to the Imperial Government) was not carried out. It is believed (and the point can no doubt be ascertained in England), that the Law Officers advised the discharge of the prisoner, on the ground that the Court was mistaken as to the western limit of Upper Canada. *See Report of Select Committee of Legislature of Canada*, 1857, *Appendix No.* 8, and see *House of Commons Report*, 1857, *on Hudson's Bay Company*, p. 397.

d. Chief Justice Draper, who was sent to England in 1857 by the Canadian Government to maintain the claims of Canada against those of the Hudson's Bay Company, was examined before the House of Commons' Committee, and in answer to question on the the subject of the western boundary of Canada, stated that—

"The only western boundary which is given to the Province of Canada is the Mississippi River." *(H. B. Report* 1857; question 4133.)

"All the documents emanating from the Crown, which give western boundary to Canada, give the Mississippi River." (Question 4134.)

e. The Right Hon. Edward Ellice, the representative of the Hudson's Bay Company before the same Committee, did not dispute the claim of Canada on this point. On the contrary he admitted that the Mississippi was its western boundary. He was asked:—

"Have you ever considered the question of a boundary between your territory and Canada?"

Answer.—"Yes, I have considered it very much." And after giving his views as to the effects of the Charter, he says:—

"Then, if you come down to the Act of Parliament constituting the boundaries of Canada, which I hold after all to be the great authority on which we must proceed, the Act of Parliament defines the limits of Canada to be bounded *westward* by the Mississippi, and thence to where the line touches the lands granted to the Hudson's Bay Company." (*Report*, p. 329; question 5833.)

Assuming then that the Mississippi River was the western boundary of the Province of Quebec, as fixed by the Act of 1774, we must follow that river to its source. According to the best American maps the principal branch appears to take its rise in Lake Itasca on or near the meridian of 95° west longitude, and about 47° north latitude. The Mississippi, as already observed, was supposed in 1774, and even in 1783, to take its rise to the north and west of the Lake of the Woods. If that supposition had proved correct, the point at which the western boundary of Canada intersects the present international boundary would be easily determined. In what direction must that line be drawn, under the terms of the Act of 1774, when the natural boundary has been traced to its natural termination? The point to be reached was the southern boundary of the Hudson's Bay Company's territories, or Rupert's Land. As "northwards" can no longer be explained or defined by the course of the river it seems that a *due north* line or a line *northwards* in the general direction or course of the river from the Ohio to its source, are the only alternatives. In case a due north line is adopted, which is perhaps the most reasonable, or the least objectionable alternative, the meridian of 95° will be the western limit of Ontario from its intersection with the 49th parallel to the southern boundary of Rupert's Land, wherever that southern boundary may be found.

In either of the cases last mentioned the western limitary line so to be found, will be the most western of the four possible lines discussed in this memorandum. But it remains for the undersigned to mention the evidence which he has discovered in favour of No. 3, or the Lake of the Woods line, and which in his opinion conclusively shows that the western boundary of Upper Canada at its southern limit, or starting point, is, and has been, ever since the Treaty of Paris of 1783, or at all events since the 22nd of April, 1786, identical, or co-terminous, with "the most north-western point" of the Lake of the Woods.

1. Interprovincial boundary lines, in the absence of express statutory definition, are fixed by prerogative. In De Reinhardt's case the Court said, "Original jurisdiction relative to the Colonial Territories of the King is in the King and his Council."

2. The Act of 1774 did not oust the jurisdiction of the Crown in the matter of boundaries. It established the limits of the Province of Quebec only "during His Majesty's pleasure." (14 Geo. III., cap. 83, sec. 1.)

3. In 1786 the King commissioned Sir Guy Carleton as "Governor in Chief in and over our Province of Quebec in America, comprehending all our territories, islands and countries in North America, *bounded* on the *south* by a line from the Bay Chaleurs," etc. describing the line through the lakes to Lake Superior, and through that lake as follows —"thence through Lake Superior northward of the Isles of Royal and Phillippeaux to the Long Lake, thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods, thence through the said lake *to the most north-western point thereof*, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay." (*See copy among the Chisholm Papers, Parliamentary Library, Ottawa.*)

It will be seen that this definition of boundary would carry the limitary line on the *west* to the same point (on the parallel of latitude which cuts the most north-western point of the Lake of the Woods) at which the Act of 1774 *intended* to place it, namely the Mississippi River. But it was afterwards discovered that the Mississippi River had its source two degrees to the south of this parallel. In the Treaty of Amity, etc., between Great Britain and the United States, of 1794, an article (4) was inserted, admitting a doubt on the point, and providing for a joint survey of the Mississippi, and "if it should appear that the said river would not be intersected by such a line (due west from north-west point of Lake of the Woods) the two parties will thereupon proceed by amicable negotiation to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties according to justice and mutual convenience, and in conformity to the intent of the said treaty."

The question was not settled till 1818. By the treaty of that year, Great Britain surrendered to the United States all the country west of the Mississippi and south of the 49th parallel, "to the Stony Mountains." The line from Lake Superior to the most north-western point of the Lake of the Woods and the 49th parallel, have since formed the international boundary in that quarter. But the western boundary of the Province of Quebec, or, since its division into Upper and Lower Canada, of the Province of Upper Canada, was not affected by that surrender of territory.

The Treaty of 1783 had given up all the country east of the Mississippi and south of the present international line. The question, then, seems to be reduced to a single point. Must we stop in our progress westward at "the most north-western point of the Lake of the Woods," because that is the last point or distance that can be ascertained on the ground either under the Treaty of 1783, or the Royal Commission of 1786, or may we continue on our *due west* course, not to the Mississippi, but to the meridian of 95°, which, according to one of the alternatives under the Act of 1774, takes the place of that river? In the first case the western boundary line of Ontario will start from the "most north-western point of the Lake of the Woods and runs *northwards* (which, in the absence of any natural or geographical line, must be interpreted to mean *north*) to the southern boundary of the territory granted to the Hudson's Bay Company. The "north-west angle" of the Lake of the Woods, as determined by the Commissioners appointed under the convention of 1818, is not the most *north-western* point of that lake according to Mr. Dawson

and other later observers; but an official determination of the point, under treaty with a foreign power, will probably be deemed binding on all subordinate authorities. In the second case, the meridian of 95° or a due north line from the source of the Mississippi, will, according to the most authentic maps, place our western boundary a few miles further west. It is to be observed that this last mentioned line was the boundary of the Province of Quebec, under the Act of 1774; was the line *intended* in the Treaty of 1783, and in the Commission to the Governor, Sir Guy Carleton, in 1786. It is the western limitary line of the "Canada" of official designation and legal jurisdiction, and it remains unchanged to this day by any Act of Parliament, or exercise of "the pleasure" of the Crown.

In conclusion, the undersigned would observe that the elaborate report of the Commissioner of Crown Lands in 1857; the instructions to Chief Justice Draper, the agent of Canada in England; and the Minute of Council, approved by the Governor, Sir Edmund Head, show that the Government of Canada of that day contended for a still more western line. The approved "minute" claims that "the western boundary of Canada extends to the Pacific Ocean." The "Canada" referred to in the minute, and in Mr. Cauchon's Report, was, however the *Canada* of the French, *Nouvelle France;* but the Canada whose boundaries we have now to determine is the *Canada* of the British, after the whole country, east of the Mississippi, had become British by the Treaty of 1763. It is the Canada whose limits were declared by Statute, by Proclamations, Commissions, and other "Acts of Sovereign authority," between that date (1763) and the passing of the British North America Act of 1867.

Many additional facts might be adduced, and statutes and documents cited, to support the position that the western boundary of Ontario is at least as far west as the most north-western point of the Lake of the Woods; but the *course* of its prolongation northwards is a question of legal inference. Its *distance* from the international boundary to the southern boundary of Rupert's Land will depend on the determination of a much more difficult question, viz., Where *is* the southern boundary of Rupert's Land?

A satisfactory answer to this question will, probably, never be given; but before it can even be suggested, with any approach to historical or legal certainty, an examination of the maps, records and documents in the custody of the Hudson's Bay Company will be necessary. As the Company have no longer an interest in maintaining the extravagant territorial claims put forward by them in recent times, such an examination would, no doubt, be readily permitted to any representative of the Province or the Dominion.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 25TH MARCH, 1872.*

The Committee of Council have had under consideration the despatch, dated 14th March instant, from the Secretary of State for the Provinces to your Excellency, together with the instructions transmitted therewith, and the report of the President of the Council, dated 22nd March instant, in reference thereto.

The Committee advise that the Government of Canada be informed that the Province of Ontario claims the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his Commission.

Certified.

J. G. SCOTT,
Clerk E. C.

* Sess. Papers, Ont., 1873, No. 44, p. 17.

THE PROVINCIAL SECRETARY TO MR. MCDOUGALL.*

PROVINCIAL SECRETARY'S OFFICE,
TORONTO, 26th March, 1872.

SIR,—I have the honour to transmit herewith a copy of an Order in Council, approved of by His Excellency the Lieutenant-Governor, having reference to the proposed settlement of the boundary line between the Province of Ontario and the North-West Territories; and also, a copy of the instructions given by the Dominion Government to the Commissioner appointed to act on its behalf in the matter. I am, at the same time, commanded by His Excellency the Lieutenant-Governor to direct you to abstain from taking any further action as Commissioner for this Province.

I have the honour to be, Sir,
Your obedient servant,

PETER GOW,
Secretary.

Hon. William McDougall, C.B.,
Toronto.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.†

GOVERNMENT HOUSE,
TORONTO, 26th March, 1872.

SIR,—With reference to your despatch, dated 14th instant, relating to the location of the boundary line between the Province of Ontario and the North-West Territories, I have the honour to transmit herewith a copy of an Order in Council approved on the 25th instant, having regard to that matter.

I have, at the same time, to intimate that the Commissioner appointed on behalf of my Government has been instructed to abstain from any further action under his Commission.

I have the honour to be, Sir,
Your obedient servant,

W. P. HOWLAND.

Hon. Secretary of State (Provinces), Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.‡

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 5th April, 1872.

SIR,—I have the honour to acknowledge the receipt of your despatch, No. 444, of the 26th ultimo, covering a certified copy of a Minute of your Executive Council, passed on that day on the subject of the location of the boundary line between the Province of Ontario and the North-West Territories, and at the same time intimating that the

*Sess. Papers, Ont., 1873, No. 44, p. 16. †*Ibid.*, p. 16. ‡*Ibid.*, p. 17.

Commissioner appointed by your Government to act on their behalf in fixing the said boundary has been instructed to abstain from any further action under his Commission.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 9TH APRIL, 1872.*

On the despatch of the Lieutenant-Governor of Ontario, dated 26th March last, on the subject of the location of the boundary line between the Province of Ontario and the North-West Territories, the Committee of the Privy Council beg leave to report :—

That in a despatch from the Secretary of State for the Provinces to the Lieutenant-Governor of Ontario, dated 30th November last, based upon a Minute of Council of the 28th November, it was suggested to the Government of Ontario that it was of great consequence that the ascertaining and fixing on the ground of the boundary line in question should be, as far as possible, expedited.

That the Lieutenant-Governor, in his despatch of the 6th of January last, expressed his concurrence in the necessity for immediate action, and to prevent unnecessary delay, suggested that a draft of the instructions proposed to be given to the Commissioner appointed on behalf of the Dominion to locate the line, should be transmitted for the consideration of the Government of Ontario at the earliest moment.

That with the view of meeting the desire so expressed, a draft of the proposed instructions was transmitted to the Lieutenant-Governor by despatch dated the 14th of March last, and

That the Lieutenant-Governor, in reply, transmitted with the despatch of the 26th of March now under consideration, an Order of his Executive Council to the following effect:—

"The Committee advise that the Government of Canada be informed that the Province of Ontario claims that the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his Commission."

The Committee of the Privy Council regret that the Government of Ontario, while expressing their difference of opinion from that of the Dominion, omitted to give their own views on the subject, and they did not state what their claim as to the location of the boundary line was.

As it is of the greatest consequence to the peace and well-being of the country in the vicinity of the dividing line, that no questions as to jurisdiction, or the means of prevention or punishment of crime should arise or be allowed to continue, the Committee recommend that the Government of Ontario be invited to communicate their opinion on the subject to your Excellency, together with a description of the boundary line which they would suggest as the correct one. Should it be found, after an interchange of opinions, that the two Governments cannot agree as to the location of the line, the Committee do not doubt that both Governments will feel it their duty to settle without delay upon some proper mode of determining, in an authoritative manner, the true position of such boundary.

Certified.

WM. H. LEE,
Clerk P. C.

---

* Sess. Papers, Ont., 1873, No. 44, p. 18.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,

OTTAWA, 10th April, 1872.

SIR,—I have the honour to transmit for the consideration of your Government, a certified copy of an Order of His Excellency the Governor General in Council, on your despatch of the 24th ult., on the subject of the location of the boundary line between the Province of Ontario and the North-West Territories.

Permit me to call your attention to the concluding paragraph of the Order in Council, and for the reason therein set forth, to invite your Government to communicate their opinion on the subject discussed in the Order, together with a description of the boundary line which they could suggest as the correct one.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B., Lieutenant-Governor, Toronto.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 19TH APRIL, 1872.†

The Committee of Council have had under consideration the despatch from the Secretary of State for the Provinces of the 10th instant, on the subject of the boundary line of Ontario, and the copy of an approved Minute of the Privy Council of Canada enclosed. In this Minute the Privy Council regrets, "That the Government of Ontario, while expressing their difference of opinion from that of the Dominion, omitted to give their own views on the subject, and did not state what their claim as to the location of the boundary was."

The Committee would observe that the despatch on which their Minute was founded did not contain any invitation to the Government of Ontario to express its views or state its claim.

The Government of Ontario is now invited to do so, and the Committee advise that the Government of Canada should be informed that this Government proposes the boundary contained in the annexed description.

The Committee further advise that the Government of Canada should be informed that as to the western limit, in the opinion of this Government, there are grounds for maintaining the contention of former Governments of Canada, that the limit of Ontario is further west than the one proposed in the description, and that, while this Government is prepared, in view of all the circumstances, to agree to the western limit so proposed, in case the same is accepted by the Government of Canada, this Government does not consider itself bound by the proposal in any other event.

As to the northern limit, it will be observed from the description that this Government maintains the position which is supported by the contentions of all former Governments, and by the indisputable facts, that the northern boundary lies north of the watershed of the St. Lawrence system, the line of which watershed is the northern boundary laid down by the Government of Canada; and the Committee advise that the Government of Canada should be informed that, in view of all the circumstances, this Government will be prepared, in case its position as to the northern boundary is agreed to by the Government of Canada, to consider any proposal which may be made by that Government for the establishment of a conventional limit to the north of that watershed.

Certified.

J. G. SCOTT,
Clerk E. C.

---

* Sess. Papers, Ont., 1873, No. 44, p. 17. † *Ibid.*, p. 19.

PROPOSED DESCRIPTION.

*(Referred to in the annexed Minute of Council.)**

The boundary line of Ontario is the international boundary from the mouth of the Pigeon River, on Lake Superior, to a point west of the Lake of the Woods, where the international boundary line would be intersected by a line drawn north from the source of the Mississippi River; thence the boundary line of Ontario runs north to the point of intersection of the southern boundaries of the Hudson's Bay Territories; thence the boundary line of Ontario is the southern boundary of those Territories to the point where that boundary would be intersected by a line drawn north from the head of Lake Temiscaming.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.†

GOVERNMENT HOUSE,
TORONTO, 19th April, 1872.

SIR,—Adverting to the correspondence that has taken place with reference to the settlement of the boundary line between the Province of Ontario and the North-West Territories, I have now the honour to transmit a copy of an Order in Council, approved this day, having regard to that question, and to invite the attention of the Dominion Government thereto.

I have the honour to be, Sir,
Your obedient servant,

W. P. HOWLAND.

Hon. Secretary of State (Provinces), Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.‡

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 22nd April, 1872.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 19th instant, adverting to previous correspondence with reference to the settlement of the boundary line between the North-West Territories and the Province of Ontario, and covering a copy of an Order of your Executive Council in relation to that question.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

---

* Sess. Papers, Ont., 1873, No. 44, p. 19. † *Ibid.*, p. 18. ‡ *Ibid.*, p. 19.

THE SECRETARY DEPARTMENT OF PUBLIC WORKS TO THE SECRETARY OF STATE.*

DEPARTMENT OF PUBLIC WORKS,
OTTAWA, 24th April, 1872.

SIR,—I am directed to transmit herewith, an account against the Province of Ontario, for maintenance of police force at Thunder Bay, and cash advances, etc., for Court House at Prince Arthur's Landing, amounting to $4,035.74, and to request that application may be made to the Government of that Province for an early settlement of the same.

I have the honour to be, Sir,
Your most obedient servant,

F. BRAUN,
Secretary.

Honourable the Secretary of State for the Provinces, Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 26th April, 1872.

SIR,—I have the honour to transmit you herewith, for the consideration of your Government, a copy of a letter from the Secretary of the Department of Public Works, together with the account therein referred to, amounting in all to the sum of four thousand and thirty-five dollars and seventy-four cents, for the maintenance of a police force at Thunder Bay, and for cash advances, etc., for the Court House at Prince Arthur's Landing.

I have the honour to be, Sir,
Your most obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

The Honourable W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

REPORT OF THE MINISTER OF JUSTICE.†

DEPARTMENT OF JUSTICE,
OTTAWA, 1st May, 1872.

With reference to a despatch of the Lieutenant-Governor of Ontario, of the 19th April, transmitting an Order in Council of that Province of the same date, on the subject of the northern and western boundaries of the Province of Ontario, and in which the Government of that Province transmits a description of what it holds those boundaries to be,

The undersigned has the honour to report that a considerable difference exists between the Government of Canada and that of Ontario, in respect to the said northern and western boundaries of Ontario, and until such boundaries are properly ascertained and defined, no criminal jurisdiction can be effectively established or exercised in the disputed territory.

Having reference to the prospect of a large influx of people into the North-West Territories, it is very material that crime should not go unpunished or unprevented, and

*Sess. Papers, Ont., 1873, No. 44, p. 25. †*Ibid.*, p. 20.

in this view the undersigned has the honour to suggest that the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council of England, with a view to the settlement, by a judgment or decision of that tribunal, of the western and northern boundaries of Ontario.

This is the more necessary as no conventional arrangement between the two Governments, as to boundary, can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is, by law, within the Province.

The undersigned has the honour, also, to call attention to the fact that the mineral wealth of the North-West country is likely to attract a large immigration into those parts, and, with a view to its development, as well as to prevent the confusion and strife that is certain to arise and continue among the miners and other settlers so long as the uncertainty as to boundary exists, the undersigned begs leave to recommend that the Government of Ontario be urged to arrange with that of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royalties, etc., and for this purpose he would suggest that the Government of Ontario be moved to appoint a Commissioner to meet the Hon. J. C. Aikins, and arrange some joint system; and that any such arrangement, when ratified by the two Governments, shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of the boundary; and that after such decision, titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall, under the decision of the Judicial Committee, be the proper party to legalize the same.

All which is respectfully submitted.

JOHN A. MACDONALD.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 16TH MAY, 1872.*

The Committee of Council have had under consideration the annexed Memorandum, dated May 1st, 1872, from the Honourable the Minister of Justice, having reference to the settlement of the question of the northern and western boundaries of the Province of Ontario, and they respectfully report their concurrence in the recommendations submitted in the said Memorandum, and advise that the same be approved and adopted.

Certified.

WM. H. LEE,
Clerk P.C.

To the Honourable
The Secretary of State, etc., etc., for the Provinces.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

OTTAWA, 16th May, 1872.

SIR,—Referring to your despatch of the 19th ultimo, covering an Order in Council of the Government of Ontario, of the same date, on the subject of the northern and western boundaries of that Province, I have the honour to enclose, for the information of your Government, a copy of an Order of the Governor-General in Council, dated to-day, together with a copy of the memorandum of the Honourable the Minister of Justice mentioned therein.

2. I am, at the same time, for reasons set forth in the memorandum, to invite the Government of Ontario to concur with the Government of Canada in a statement of the

*Sess. Papers, Ont., 1873, No. 44, p. 21. †*Ibid.*, p. 20.

case now in dispute between the said Governments, respecting such boundaries, for immediate reference to the Judicial Committee of the Privy Council, with the view to a settlement, by a judgment or decision of that tribunal, of the western and northern boundaries of Ontario.

3. I am also to urge upon the Government of Ontario the necessity, in view of the facts stated in the last paragraph of the accompanying memorandum, of arranging with the Government of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royalties, etc., in the portion of territory in controversy, and for this purpose I have to request you to move your Government to appoint a Commissioner to meet the Honourable J. C. Aikins to arrange such joint system, on the understanding that any such arrangement when ratified by the two Governments shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of the boundaries, and that after such decision titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall under the decision of the Privy Council be the proper party to legalize the same.

I have the honour to be, Sir,

Your most obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

The Honourable Wm. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 31ST MAY, 1872.*

The Committee of Council have had under consideration the despatch from the Secretary of State for the Provinces, of the 16th May, with the Minute of Council and memorandum of the Minister of Justice enclosed in that despatch, all relating to the settlement of the question of the northern and western boundaries of the Province of Ontario. The Committee of Council regrets that the Government of Canada does not propose in any respect to modify its views with reference to these boundaries, opposed as these views are to the general tenor of the expressions and conduct of the Governments of the late Province of Canada, and of the Dominion in the past. The Committee of Council also regrets that the Government of Canada is not prepared to negotiate for the arriving at a conventional arrangement as regards the boundaries. The Committee infers that the Government of Canada disapproves of that course in consequence of the difficulty stated in the following extract from the memorandum of the Minister of Justice.

"This is the more necessary as no conventional arrangement between the two Governments, as to boundary, can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is by law within the Province."

The Committee desires to call attention to the third clause of the Act of the Imperial Parliament, passed 29th June, 1871, chap. 28, which is in these words:

"The Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby."

It appears to the Committee that under the operation of this clause it is quite possible to arrive at a conventional settlement of the question by the joint action of the Executive and Legislative authorities of the Dominion and of the Province.

---

* Sess. Papers, Ont., 1873, No. 44, p. 21.

With reference to the emergency arising out of the expected immigration during this spring and summer, it appears to the Committee that a short Act of the Parliament of Canada, providing that the boundaries of the Province of Ontario should, for the purposes of criminal jurisdiction, and so far as the Parliament of Canada can provide, be deemed, pending the settlement of the question, to extend as far as the limits which are specified in the memorandum transmitted to the Government of Canada by this Government, would, though open to some objection, afford the best practicable solution of that difficulty.

With reference to the proposed submission to the Judicial Committee of the Privy Council, this Committee begs to observe that the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time; and upon the whole the Committee is of opinion that the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by reference to a Commission sitting on this side of the Atlantic, and the Committee recommends that, without for the present dealing definitely with the proposal of the Government of Canada for a reference to the Judicial Committee, this counter-suggestion should be made to that Government.

The Committee of Council entertains a strong conviction that it is the duty of the Government of Ontario to retain in the meantime the control of the lands within the boundaries claimed by it; but as it is anxious that the policy of the Government with reference to the disposition of these lands should, so far as practicable, conform to the views of the Government of Canada, the Committee agrees that an effort should be made to avoid the possible difficulties arising from the claims put forward by that Government, and with this view the Committee recommends that the Honourable R. W. Scott should be requested to confer with the Honourable J. C. Aikins, as proposed by the despatch of the 16th May.

Certified.

J. G. Scott,
Clerk E. C.

Executive Council Chamber, 31st May, 1872.

The Lieutenant-Governor to the Secretary of State.*

Government House,
Toronto, 31st May, 1872.

Sir,—I have the honour to transmit herewith a copy of an Order in Council, approved this day, having reference to the settlement of the boundary line between the Province of Ontario and the North-West Territories, and to invite the early attention of the Dominion Government thereto.

I have the honour to be, Sir,
Your obedient servant,

W. P. Howland,

Per E. G. Curtis,
Private Secretary.

Hon. Secretary of State (Provinces), Ottawa.

---

* Sess. Papers, Ont., 1873, No. 44, p. 21.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 1st June, 1872.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 31st ultimo, covering a copy of an Order of your Executive Council, having reference to the settlement of the boundary line between the Province of Ontario and the North-West Territories.

Your despatch and its enclosure will be brought under the early notice of the Governor-General in Council.

I have the honour to be, Sir,
Your obedient servant,

JOSEPH HOWE.
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS (CANADA) TO THE SECRETARY OF STATE.†

PUBLIC WORKS,
OTTAWA, 10th June, 1872.

SIR,—I have the honour to enclose herewith, sundry accounts, with vouchers of an expenditure amounting to $797.09 (seven hundred and ninety-seven dollars and nine cents), disbursed by Mr. S. J. Dawson, in charge of the Red River route, for the maintenance of a police force at Thunder Bay. The Minister of Public Works requests that you will be good enough to present the same to the Ontario Government for payment.

I have the honour to be, Sir,
Your obedient servant,

F. BRAUN,
Secretary.

The Honourable the Secretary of State,
etc., etc., etc.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

OTTAWA, 13th June, 1872.

SIR,—I have the honour to transmit to you, herewith, a copy of a letter from the Department of Public Works, together with the accounts and vouchers therein referred to.

May I request that you will have the goodness to bring these documents under the early notice of your Government.

I have the honour to be, Sir,
Your most obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

The Honourable W. P. Howland,
Lieutenant-Governor, Toronto.

---

* Sess. Papers, Ont., 1873, No. 44, p. 22. †*Ibid.*, p. 25.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.*

GOVERNMENT HOUSE,
TORONTO, 25th June, 1872.

SIR,—Adverting to your despatch under date the 26th April last, enclosing a copy of a letter from the Secretary of the Department of Public Works of Canada, together with certain accounts therein referred to, amounting to the sum of $4,035.74, for the maintenance of a police force at Thunder Bay, and for cash advances for the Court House at Prince Arthur's Landing, I have the honour to transmit herewith cheques of the Treasury Department, Ontario, Nos. 782 and 783, drawn in favour of the Dominion Government for the sums of $215.02 and $793.31 respectively, being in discharge of items in connection with the Court House at Prince Arthur's Landing.

With reference to the other items in connection with the maintenance of a police force at Thunder Bay, I have at the same time to intimate that my Government has been unable to ascertain the authority from the Province of Ontario upon which the Province is now asked to pay these amounts, and I have, therefore, to request you to be good enough to state, for their information, the authority upon which the expenditure in question has been made.

While my Government fully concurs in the view of the Government of the Dominion of Canada, that Thunder Bay and that part of the Red River road, the construction of which has given rise to the claim now made, is within the limits of the Province of Ontario, I cannot but observe that the Government of the Dominion of Canada is at this moment preferring a claim to that territory on the ground of its being beyond the limits of this Province.

I have the honour to be, Sir,
Your most obedient servant,
W. P. HOWLAND.

To the Honourable
The Secretary of State for the Provinces, Ottawa.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 26TH JUNE, 1872.*

The Committee of Council have had under consideration the despatch of the Secretary of State for the Provinces to his Excellency the Lieutenant-Governor, dated the 26th April, 1872, enclosing a letter from the Department of Public Works of Canada, respecting the transmission of an account against the Province of Ontario for maintenance of police force in Thunder Bay, and cash advanced, etc., for Court House at Prince Arthur's Landing, amounting together to $4,035.74. The items in connection with the Court House at Prince Arthur's Landing, amounting to $793.91 and $215.02, making together $1,008.93, are correct, and cheques have been issued for these amounts, and the Committee recommend that they should be transmitted to the Secretary of State.

With reference to the other items in connection with the maintenance of police force, the Committee have been unable to ascertain the authority from the Province of Ontario upon which the Province is asked to pay the amount, and the Committee recommend that the Secretary of State be requested to furnish that authority.

The Committee agree in the view of the Government of Canada that Thunder Bay and that part of the Red River road, the construction of which has given rise to the claim, is within the limits of the Province of Ontario, but they feel bound to observe that the Government of Canada is at this moment preferring a claim to that territory as beyond the limits of Ontario.

Certified. J. G. SCOTT,
Clerk, Executive Council, Ontario.

---

* Sess. Papers, Ont., 1873, No. 44, p. 26.

THE UNDER-SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, July 2nd, 1872.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 25th ultimo, in reply to one from the Secretary of State for the Provinces, under date the 26th April last, enclosing a copy of a letter from the Secretary of the Department of Public Works of Canada, together with certain accounts therein referred to, amounting to $4,035.74, for the maintenance of a police force at Thunder Bay, and for cash advances for the Court House at Prince Arthur's Landing.

I have also to acknowledge the receipt of two cheques (enclosed in your despatch) on the Treasury Department, Ontario, in favour of the Dominion Government, for the sums of $215.02 and $793.31 respectively, being in discharge of items in connection with the Court House at Prince Arthur's Landing. A copy of your despatch has been communicated to the Minister of Public Works, and his attention has been called to the request made by you on behalf of your Government, to be informed of the authority upon which the Province of Ontario is called upon to pay the expenses specified in the accounts in connection with the maintenance of the police force at Thunder Bay.

I have the honour to be, Sir,
Your obedient servant,

E. A. MEREDITH,
Under-Secretary of State.

The Honourable Wm. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

BANK OF MONTREAL DEPOSIT RECEIPT.†

(*Original for the Depositor.*)

No. 575. BANK OF MONTREAL,
$1,008.33. OTTAWA, 15th July, 1872.

Received from Dept. Public Works, on account of transportation service, N.-W. Territory, the sum of ten hundred and eight $\frac{33}{100}$ dollars, which amount will appear at the Receiver-General's credit with this Bank.

Signed in duplicate.

Ent. 3 p. JAS. SMITH.

THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS (CAN.) TO THE PROVINCIAL SECRETARY.†

OTTAWA, July 24th, 1872.

SIR,—I have the honour to enclose herewith a duplicate receipt for the sum of $1,008.33 paid into the Bank of Montreal by this Department, on account of transport service, N.-W. Territory, and paid to the credit of the Receiver-General of the Dominion.

I have the honour to be, Sir,
Your obedient servant,

F. BRAUN,
Secretary.

The Honourable
The Provincial Secretary of Ontario, etc., etc., Toronto.

---

* Sess. Papers, Ont., 1873, No. 44, p. 26. † *Ibid.*, p. 27.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 7TH NOVEMBER, 1872.*

The Committee of Council have had under consideration the despatch from the Lieutenant-Governor of Ontario of the 31st May last, transmitting a further Order in Council of that Province on the subject of its northern and western boundaries.

The Committee have the honour to report that the importance of obtaining an authoritative decision as to the limits, to the north and to the west of the Province of Ontario, has already been affirmed by Minute in Council.

That the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combine to render such a decision indispensable.

In reference to the northern boundary, the Government of Ontario contend that it lies to the north of the watershed which divides the waters running to the south from those which run towards Hudson's Bay, and offer, "Should this view be acceded to by the Government of the Dominion, to consider any proposal which may be made to them by that Government for the establishment of a conventional limit to the north of that watershed"—and as regards the western boundary line, they state that it may be defined by a line drawn north from a point west of the Lake of the Woods and on the 49th parallel of north latitude, where that parallel would be intersected by a line drawn north from the source of the Mississippi River, and from thence to the point of intersection with the southern boundary of the Hudson's Bay Territory, but reserve, in the event of such a line not being agreed to by the Canadian Government, the right to contend that the boundary of Ontario is still farther to the west.

The northern boundary of Ontario, the Government of the Dominion believe to be the line of the watershed separating the waters which run towards Lake Superior from those which run towards Hudson's Bay; and the western boundary, a line drawn in accordance with the provisions of 14 George III., chapter 83, from the conflux of the Mississippi and Ohio rivers northward (*i.e.*, by the shortest northward course) to the southern boundary of the Hudson's Bay Company's Territories.

With the divergent views thus held by the respective Governments, and considering the limits within which the Government of Ontario propose to circumscribe the possible conventional boundaries, the difficulties which would attend an attempt to arrive at a settlement of the present differences between the two Governments in that mode are manifest, and in the opinion of the Committee too great to render such an attempt expedient.

To place the territory in dispute, pending the settlement of the question, within the limits of Ontario for criminal purposes, as suggested in the Order in Council of that Province of the 31st May, whilst not at all providing for the sale or management of lands or granting titles thereto, or for civil jurisdiction, would, there is good reason to apprehend, be beyond the powers conferred by the "British North America Act of 1867," and would be objectionable, not only as tending to render one party to the dispute less anxious possibly for its settlement, but, also, as calculated to exercise a prejudicial influence on the ultimate assertion of the rights of the Dominion.

The Government of Ontario without, for the time, definitely dealing with the proposal of the Government of Canada for a reference to the Judicial Committee of the Privy Council, observe that "the solution of the boundary question depends upon numerous facts, the evidence of many of which is procurable only in America, and the collection of which would involve much time, and suggest that the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by a reference to a Commission sitting on this side of the Atlantic."

The Committee are of opinion that the evidence upon which the decision of the boundaries in question would depend, is chiefly, if not altogether, of a documentary character, and would be found rather in the Imperial Archives than in America, and

*Sess. Papers, Ont., 1873, No. 44, p. 23.

that any which exists here might readily be supplied, whilst an authoritative decision by the Judicial Committee of the Privy Council would be final, and command that general assent which is so important in endeavouring to adjust questions of an inter-provincial character.

There are objections also to this proposal as regards the mode of conferring legal powers upon such a Commission, which it would be found very difficult, if not impossible to deal with, and the Committee doubt whether any other tribunal than that of the Queen in Council would be satisfactory to the other Provinces of the Dominion in the decision of questions in which they have a large interest, the importance of which is, by current events, being constantly and rapidly augmented, and they respectfully recommend that the proposition for a reference to Her Majesty in Council be renewed to the Government of Ontario.

They recommend, therefore, that a copy of this Minute, if approved, be transmitted to the Lieutenant-Governor of Ontario by the Secretary of State for the Provinces.

Certified.

W. A. Himsworth,
C. P. C.

The Secretary of State to the Lieutenant-Governor.*

Department of the Secretary of State for the Provinces,
Ottawa, 12th November, 1872.

Sir,—With reference to your despatch of 31st May last, and its enclosure, I have the honour to transmit to you herewith, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, on the subject of the northern and western boundaries of the Province of Ontario.

I have the honour to be, Sir,
Your obedient servant,

Joseph Howe,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

Report of the Secretary of State (Canada).†

The Secretary of State has the honour to submit to your Excellency in Council that applications have been made to him for mining licenses and patents for lands in the neighbourhood of Lake Shebandowan and in places about the head of Lake Superior, and he recommends that, pending the locating of the boundary line between the North-West Territory and the Province of Ontario, no action be taken upon these or any similar applications; he further recommends that the Lieutenant-Governor of Ontario be informed of the course proposed to be taken by your Excellency's Government; and that it be suggested that the Government of that Province should in like manner refrain from granting patents or mining licenses in the region of country about the head of Lake Superior and Lake Shebandowan until after the boundary line shall have been settled, and he begs further to submit that it is of much importance that the ascertaining and fixing on the ground of the boundary line in question should, as far as possible, be expedited.

J. C. Aikins.

25th November, 1871.

---

* Sess. Papers, Ont., 1873, No. 44, p. 23.

† House of Commons Return, 19th March, 1881, No. 37, p. 12.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO ON THE OPENING OF THE LEGISLATURE, 8TH JANUARY, 1873.*

Since we last met negotiations have taken place between the Dominion Government, and myself on the subject of the northern and western boundaries of the Province. The correspondence will be laid before you. Meanwhile, I have directed investigations to be made which were necessary to the establishment of the rights of Ontario, and a mass of evidence in favour of the boundaries claimed by Ontario has been accumulated, which will I hope prove abundantly sufficient to secure a favourable result.

RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF ONTARIO.†

LEGISLATIVE ASSEMBLY,
TORONTO, 20th January, 1873.

Resolved, That an humble address be presented to His Excellency the Lieutenant-Governor, praying His Excellency to cause to be laid before this House—

So much of the memorandum of the Commissioners of Crown Lands, made in March, 1857, as relates to the north-west boundaries of Canada; also, the report of Mr. Chief Justice Draper respecting his mission to England, in 1857, on the subject of the claims of the Hudson's Bay Company, together with copies of the two documents relating to the boundaries of Canada, laid before the Committee of the House of Commons by the Chief Justice.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.‡

GOVERNMENT HOUSE,
TORONTO, 31st January, 1873.

SIR,—I have the honour to transmit herewith a copy of a resolution of the Legislative Assembly of this Province, asking for certain information relative to the north-west boundaries, and to request you to be good enough to furnish the same at your earliest convenience.

I have the honour to be, Sir,
Your obedient servant,

W. P. HOWLAND.

Hon. Secretary of State for the Provinces,
Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.‡

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 3rd February, 1873.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 31st ultimo, covering a copy of a resolution of the Legislative Assembly of the Province of Ontario, asking for certain information relative to the north-west boundaries of Canada.

---

* Journals Leg. Ass., 1873, Vol. 6, p. 2.
† *Ibid.*, p. 39.
‡ Sess. Papers, Ont., 1875-6, No. 14, p. 1.

Your despatch will be submitted for the early consideration of the Governor-General in Council.

I have the honour to be, Sir,

Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.*

GOVERNMENT HOUSE,
TORONTO, 14th March, 1873.

SIR,—I have the honour to invite your attention to my despatch of 31st January last, transmitting a copy of a resolution of the Legislative Assembly of this Province, asking for certain information relative to the north-west boundaries of Ontario. I have to request you to be good enough to furnish the same at your earliest convenience, with a view to its presentation to the Legislative Assembly this session.

I have the honour to be, Sir,

Your obedient servant,

W. P. HOWLAND.

Hon. Secretary of State for the Provinces,
Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,
OTTAWA, 18th March, 1873.

SIR,—Referring to your despatches of the 31st January last and the 14th instant, requesting certain information relative to the north-west boundaries of Ontario, I have to acquaint you that I am informed that the memorandum of the Commissioner of Crown Lands for the late Province of Canada, made in March, 1857, and referred to in the resolution of the Legislative Assembly of Ontario enclosed in your despatch first above mentioned, is not in the possession of the Government, but will, with the report of Mr. Chief Justice Draper, referred to in the same resolution, be found in the appendix to the Journals of the Legislative Assembly of the late Province of Canada, Vol. 15, No. 4, 1857.

I have the honour to be, Sir,

Your obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

---

* Sess. Papers, Ont., 1875-6, No. 14, p. 2.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 26th December, 1873.

SIR,—I have the honour to invite your attention to the letter addressed to your predecessor on the 12th November, 1872, covering a copy of a report of His Excellency the Governor-General in Council, on the subject of the northern and western boundaries of the Province of Ontario.

May I request that you will have the goodness to bring the matter under the early notice of your Government, with a view to their coming to a decision on the proposition contained in the Order in Council in question to submit the question of the boundary to the decision of the Judicial Committee of the Privy Council.

I have the honour to be, Sir,

Your obedient servant,

D. CHRISTIE,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE OPENING OF THE LEGISLATURE, 8TH JANUARY, 1874.†

The collection of evidence with respect to our North-West boundary is still going on; and the evidence for and against our claims will soon, I trust, be in a position to be referred to some tribunal for adjudication. I have no apprehension as to the result. Meanwhile, informal negotiations have taken place for the adoption of a provisional line, so that the settlement of the important territory in dispute may not be delayed for a decision as to the true and permanent boundary. Resolutions on the subject will probably be submitted for your consideration.

RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF ONTARIO, PASSED 23RD MARCH, 1874.‡

Resolved, That this House approves of the reference of the question of the western boundary of this Province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council shall see fit, and approves likewise of the adoption of a provisional boundary line in the meantime, on such terms as may be agreed upon between the Government of the Dominion and the Government of this Province.

REPORT OF THE MINISTER OF THE INTERIOR.§

DEPARTMENT OF THE INTERIOR,

June 2nd, 1874.

The undersigned has to report that on the 16th May, 1872, a Report of the Honourable the Privy Council was approved, embodying a memorandum from the

---

* Sess. Papers, Ont., 1875-6, No. 14, p. 4.

† Journals Leg. Ass., 1874, Vol. 7, p. 3.

‡ *Ibid.*, p. 252.

§ Sess. Papers, Ont., 1875-6, No. 14, p. 8.

Honourable the Minister of Justice, having reference to the boundaries of the northern and western part of Ontario, wherein the Minister of Justice calls attention to the fact that the mineral wealth of the North-West country is likely to attract a large immigration into those parts, with a view to its development, as well as to prevent the confusion and strife that is certain to arise and continue among the miners and other settlers so long as the uncertainty as to boundary exists. The undersigned begs leave to recommend that the Government of Ontario be urged to arrange with that of the Dominion for some joint course of action as to the granting of land.

That as the Indian title of a considerable part of the territory in dispute had not then been extinguished, it was thought desirable to postpone the negotiations for a conventional arrangement, under which the territory might be opened for sale or settlement, until a Treaty was concluded with the Indians.

That barrier being now removed, the undersigned has the honour to recommend that as some considerable time must yet elapse before the boundaries of Ontario can be finally adjusted, it is desirable in the meantime to agree upon conventional boundaries, otherwise the development of that important portion of Canada lying between Lake Superior and Lake of the Woods will be seriously retarded, as applications to take up lands in that section are being constantly made, and the inability to obtain recognition of claims from either the Government of Ottawa or Toronto is impeding the settlement of the country.

The undersigned would therefore suggest that the Ontario Government be invited to arrange with the Dominion Government for some joint course of action as to the granting of land and adjusting disputed rights in the territory claimed by both Governments, and that the Ontario Government be moved to appoint a Commissioner to meet the undersigned and arrange some joint system for the sale of lands, by the adoption of a conventional boundary on the west and north, and that after the final adjustment of the true boundaries, titles to the land should be confirmed by the Government, whether of Ontario or the Dominion, whichever should be the proper party to legalize the same.

David Laird,
Minister of the Interior.

Report of a Committee of the Privy Council, approved by the Governor-General on the 3rd June, 1874.*

The Committee of the Privy Council have had under consideration the memorandum, dated 2nd June, and hereunto annexed, from the Honourable the Minister of the Interior, representing that as some considerable time must elapse before the northern and western boundaries of Ontario can be finally adjusted, it is desirable in the meantime to agree upon conventional boundaries, and suggesting that the Ontario Government be moved to appoint a Commissioner to meet with him, the Minister of the Interior, and arrange some joint system for the sale of lands, and adjusting disputed rights in the territory claimed by both Governments by the adoption of a conventional boundary on the west and north, and that, after the final adjustment of the true boundaries, titles to lands should be confirmed by the Government, whether of Ontario or the Dominion, whichever should be the party to legalize the same.

The Committee concur in the recommendation submitted in the said memorandum, and submit the same for your Excellency's approval.

W. A. Himsworth,
Clerk Privy Council.

---

* Sess. Papers, Ont., 1875-6, No. 14, p. 7.

THE UNDER-SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 5th June, 1874.

SIR,—I have the honour to transmit to you herewith a copy of an Order in Council of the 3rd inst., suggesting that your Government be moved to appoint a Commissioner to meet the Honourable the Minister of the Interior, and arrange some joint system for the sale of lands, and adjusting disputed rights in the territory claimed by both Governments, by the adoption of a conventional boundary on the west and north, and for the other purposes mentioned in the said Order in Council.

I have the honour to be, Sir,
Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

MEMORANDUM OF AGREEMENT FOR PROVISIONAL BOUNDARY IN RESPECT OF PATENTS OF LANDS.†

The Government of the Dominion of Canada having, by an Order in Council dated the 3rd day of June, 1874, suggested that the Ontario Government should be moved to appoint a Commissioner to meet the Minister of the Interior and "arrange some joint system for the sale of lands, and adjusting disputed rights in the territory claimed by both Governments, by the adoption of a conventional boundary on the west and north, and that after the final adjustment of the true boundaries, titles to lands should be confirmed by the Government, whether of Ontario or the Dominion, whichever should be the proper party to legalize the same."

And the Ontario Government having acted on the suggestion of the Privy Council, by appointing the Commissioner of Crown Lands of that Province to meet the Minister of the Interior, and discuss the proposed arrangements, and the said parties having met this day, have agreed to the following propositions as the basis of a memorandum to be submitted to their respective Governments:—

1. That the conventional boundary of the Province of Ontario, for the purposes set forth in the said Order in Council of the 3rd June instant, shall be, on the west, the meridian line passing through the most easterly point of Hunter's Island, run south until it meets the boundary line between the United States and Canada, and north until it intersects the fifty-first parallel of latitude; and the said fifty-first parallel of latitude shall be the conventional boundary of the Province of Ontario on the north.

2. That all patents for lands in the disputed territory, to the east and south of the said conventional boundaries, until the true boundaries can be adjusted, shall be issued by the Government of Ontario; and all patents of lands on the west or north of these conventional boundaries shall be issued by the Dominion Government.

3. That when the true west and north boundaries of Ontario shall have been definitely adjusted, each of the respective Governments shall confirm and ratify such patents as may have been issued by the other for lands then ascertained not to be within the territory of the Government which granted them, and each of the respective Governments shall also account for the proceeds of such lands as the true boundaries, when determined, may show to belong of right to the other.

4. That the Government of the Dominion shall transfer to the Government of the Province of Ontario all applications for lands lying to the east and south of the conven-

*Sess. Papers, Ont., 1875-6, No. 14, p. 7. †*Ibid.*, p. 10.

tional boundaries, and also all deposits paid on the same; and the Ontario Government shall transfer to the Dominion Government all applications for lands lying to the west or north of the said boundaries, and likewise all deposits paid thereon; and such of the said applications as are *bona fide* and in proper form, shall be dealt with finally, according to the priority of the original filing, and where applications for the same lands have been filed in the Departments of both Governments, the priority shall be reckoned as if all had been filed in one and the same office.

Signed in duplicate this 26th day of June, 1874.

DAVID LAIRD,
Minister of the Interior.

T. B. PARDEE,
Commissioner of Crown Lands.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 8TH DAY OF JULY, 1874.*

The Committee have had under consideration a memorandum, dated 29th June, 1874, from the Honourable the Minister of the Interior, stating that, in pursuance of the suggestion contained in the Minute in Council of the 3rd June inst., relative to a provisional arrangement respecting the western and northern boundaries of the Province of Ontario and the questions therewith connected, the Ontario Government appointed the Hon. T. B. Pardee, Commissioner of Crown Lands in that Province, to meet him, the Minister of the Interior, at his office, with a view to their arriving at some understanding of a provisional nature on the subjects referred, and that on the 26th June ult., the memorandum hereto annexed was agreed upon, and he submits the same for the consideration of your Excellency in Council.

The Committee are of opinion that the provisional arrangement proposed in the said memorandum is unobjectionable, and advise that the same be sanctioned by your Excellency in Council.

Certified.

W. A. HIMSWORTH,
C. P. C.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR THE 9TH DAY OF JULY, 1874.*

The Committee of Council have had under consideration the Report of the Honourable the Commissioner of Crown Lands, dated 2nd July, 1874, submitting for ratification and approval by your Excellency a joint memorandum signed by the Hon. David Laird, Minister of the Interior of the Dominion of Canada, and the Honourable the Commissioner of Crown Lands, whereof a copy is hereunto annexed, fixing a temporary conventional boundary of the Province of Ontario on the west and north, and adopting a system for the sale of lands and for adjusting disputed rights in the territory claimed by both Governments.

The Committee advise that the arrangements proposed in the said memorandum be adopted and ratified by your Excellency.

Certified.

J. G. SCOTT,
Clerk, Executive Council, Ontario.

---

* Sess. Papers, Ont., 1875-6, No. 14, p. 9.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.*

GOVERNMENT HOUSE,
TORONTO, 10th July, 1874.

SIR,—I have the honour to transmit herewith a copy of an Order in Council approving of a joint memorandum, signed by the Hon. David Laird, Minister of the Interior of the Dominion of Canada, and the Honourable the Commissioner of Crown Lands of this Province (a copy of which is also enclosed), fixing a temporary boundary of the Province of Ontario on the west and north, and adopting a system for the sale of lands and for adjusting disputed rights in the territory claimed by both Governments.

I have, etc.,

JOHN CRAWFORD.

The Honourable the Secretary of State, Canada,
Ottawa.

THE UNDER-SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 22nd July, 1874.

SIR,—I have the honour to transmit to you, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, approving of a memorandum of agreement adopted by the Hon. the Minister of the Interior, and the Hon. the Commissioner of Crown Lands of the Province of Ontario, relative to a provisional arrangement respecting the western and northern boundaries of that Province.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

To His Honour the Lieutenant-Governor of Ontario,
Toronto, Ontario.

REPORT OF THE HON. ADAM CROOKS, MEMBER OF THE EXECUTIVE COUNCIL, TO THE LIEUTENANT-GOVERNOR.‡

May it please your Excellency:

The undersigned has the honour to report the following on the subject of the western and northern boundaries of the Province of Ontario:

By Chapter 28 of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it was enacted that the Parliament of Canada might from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as might be agreed to by the said Legislature, and might, with the like consent, make provision respecting the effect and operation of any such increase or

* Sess. Papers, Ont., 1875-6, No. 14, p. 8. † *Ibid.*, p. 9. ‡ *Ibid.*, p. 14. See Order in Council, p. 249, *post*.

diminution or alteration of territory in relation to any Province affected thereby. By a resolution of the Legislative Assembly, passed on the 3rd day of March last, the House approved of the reference of the question of the western boundary of this Province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council should see fit. It is considered by your Excellency's Council to be expedient that the question of the northern boundary of this Province should be determined at the same time as the western boundary, though the determination of the northern boundary is not of so pressing importance as the other. In view of these objects, the undersigned, before his late visit to Ottawa on other public business, was authorized by the other members of your Excellency's Council to propose (subject to your Excellency's approval) to the Government of the Dominion that the question concerning the northern and western boundaries of the Province of Ontario should be determined by a reference to arbitrators to be mutually agreed upon, and whose standing and ability might readily be expected to secure for their decision the confidence alike of the people of Ontario and the people of the Dominion.

Your Excellency's Council were of opinion that a decision by such arbitrators is likely to be more prompt and perhaps more satisfactory than any other mode of decision which is attainable.

The undersigned was also authorized to suggest the name of the Hon. William Buell Richards, Chief Justice of Ontario, as one of the arbitrators, subject to your Excellency's approval.

Accordingly, the undersigned while at Ottawa conferred with the Premier and other members of the Dominion Government on the subject of the said matters, and made the above suggestions to them.

The Government of the Dominion concurred in the views expressed on the part of the Government of Ontario, and proposed on behalf of the Dominion the name of the Hon. Lemuel Allan Wilmot, late Lieutenant-Governor of New Brunswick, to act in conjunction with the said Chief Justice, and that authority be given to the said the Hon. William Buell Richards and the Hon. Lemuel Allan Wilmot, to agree upon a third person to be associated with them, such third person not being a resident of Canada, and that the determination of a majority of such referees should be final and conclusive upon the limits to be taken as and for such boundaries as aforesaid respectively.

The undersigned recommends that the Province agree to concurrent action with the Dominion in obtaining such legislation as may be necessary for giving binding effect to the conclusion which may be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance therewith.

ADAM CROOKS.

10th November, 1874.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 12TH NOVEMBER, 1874.*

On a memorandum dated 12th November, 1874, from the Hon. Mr. Mackenzie, stating that he recommends concurrence in the proposition of the Government of Ontario to determine by means of a reference the northern and western boundries of that Province relatively to the rest of the Dominion.

That the Ontario Government having named the Hon. William Buell Richards, Chief Justice of Ontario, as one of the referees, he submits the name of the Hon. Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advises that authority be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees be final and conclusive upon the limits to be taken as and for such boundaries respectively.

* Sess. Papers, Ont., 1875-6, No. 14, p. 14.

He further recommends that the Dominion agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith.

The Committee submit the above recommendations for your Excellency's approval.

Certified.

W. A. Himsworth,
C. P. C.

Extract from the Speech of His Honour the Lieutenant-Governor of Ontario, on the Opening of the Legislature, 12th November, 1874.*

In accordance with a resolution passed at your last session, with respect to the westerly and northerly boundaries of the Province, my Government and the Government of the Dominion have agreed on a provisional line, to be assumed as correct for the purpose of land grants by each Government until the true and permanent boundary shall be ascertained and determined; and have agreed to leave to arbitration the question as to the permanent boundary. Two distinguished gentlemen have been selected for the office of arbitrators, and they are soon to enter upon their duties, and will probably finish their work in the early part of next year.

The Under-Secretary of State to the Lieutenant Governor.†

Department of the Secretary of State,
Ottawa, 21st November, 1874.

Sir,—I am directed to transmit to you, for the information of your Government, a copy of an Order of His Excellency the Governor-General in Council, on the subject of the appointment of referees to determine the northern and western boundaries of the Province of Ontario, relatively to the rest of the Dominion.

I have the honour to be, Sir,
Your obedient servant,

Edouard J. Langevin,
Under-Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

The Under-Secretary of State to Hon. Lemuel Allan Wilmot.‡

Department of the Secretary of State,
Ottawa, 21st November, 1874.

Sir,—I have the honour to inform you that His Excellency the Governor-General in Council has been pleased, at the instance of the Government of the Province of Ontario, to direct that the question of the northern and western boundaries of that Province relatively to the rest of the Dominion, be determined by means of three referees, of whom one is to be named by the Government of the Dominion, and one by the Government of Ontario—these two to have authority to agree upon a third, not being a resident of

* Journals Leg. Ass., 1874, Vol. 8, p. 1.

† Sess. Papers, Ont., 1875-6, No. 14, p. 13.

‡ House of Coms. Return, 19th March, 1881, No. 37, p. 22.

Canada; the determination of a majority of such three referees to be final and conclusive upon the limits to be taken as and for such boundaries respectively.

I am further directed to state that His Excellency desires to avail himself of your services as a referee on behalf of the Dominion for the above purpose, to act in conjunction with the Honourable William Buell Richards, Chief Justice of Ontario, the referee named by the Government of that Province.

I am to add that the Dominion Government agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith.

May I request that you will have the goodness to acquaint me, for His Excellency the Governor-General's information, whether you are prepared to accept the office of referee for the Dominion, and that, if so, you will place yourself in communication with the Honourable Mr. Chief Justice Richards.

I have the honour to be, Sir,
Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

Hon. L. A. Wilmot, Fredericton, N.B.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR THE 25TH DAY OF NOVEMBER, 1874.*

The Committee of Council have had under consideration the annexed Report of the Hon. the Treasurer, dated 10th November, 1874,‡ with reference to the western and north rn boundaries of Ontario, and advise that the action of the Treasurer be approved of by your Excellency, and that the recommendations contained in the said Report be acted upon.

Certified. J. G. SCOTT,
Clerk Executive Council, Ontario.

THE ASSISTANT PROVINCIAL SECRETARY TO CHIEF JUSTICE RICHARDS.†

PROVINCIAL SECRETARY'S OFFICE, ONTARIO,
TORONTO, 3rd December, 1874.

SIR,—I am commanded by His Honour the Lieutenant-Governor to inform you that he has been pleased to appoint you one of the arbitrators in the matter of the settlement of the northern and western boundaries of the Province of Ontario. I am, at the same time, to transmit, herewith, copy of the Order in Council, and the recommendation of the Hon. the Treasurer relating to such propose l arbitration.

I have the honour to be, Sir,
Your obedient servant,

I. R. ECKART,
Assistant Secretary.

The Honourable Wm. Buell Richards,
Chief Justice of Ontario.

---

* Sess. Papers, Ont., 1875-6, No. 14, p. 14. † *Ibid.* p. 15. ‡ See Report, p. 246, *ante.*

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE OPENING OF THE LEGISLATURE, 25TH NOVEMBER, 1875.*

Since the dissolution of the last House, the question of the northerly and westerly boundaries of the Province has continued to receive the attention of the Government. Informal negotiations have taken place with respect to both a compromise line and the arbitration which the Legislature authorized, but no final result has been arrived at; meanwhile, steps have been taken for obtaining some additional evidence expected to be of value.

AN ACT RESPECTING THE NORTH-WEST TERRITORIES, AND TO CREATE A SEPARATE TERRITORY OUT OF PART THEREOF.†

(Extract.)

Whereas it is expedient, pending the settlement of the western boundary of Ontario, to create a separate territory of the eastern part of the North-West Territories: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. All that portion of the North-West Territories bounded as follows, that is to say:—

Beginning at the westerly boundary of the Province of Ontario, on the international boundary line dividing Canada from the United States of America; then westerly, following upon the said international boundary line, to the easterly boundary of the Province of Manitoba; thence due north, along the said easterly boundary of Manitoba, to the north-east angle of the said Province; thence due west, on the north boundary of said Province, to the intersection by the said boundary of the westerly shore of Lake Manitoba; thence northerly, following the said westerly shore of the said lake, to the easterly terminus thereon of the Portage connecting the southerly end of Lake Winnepegosis with the said Lake Manitoba, known as "The Meadow Portage;" thence westerly, following upon the trail of the said Portage, to the westerly terminus of the same, being on the easterly shore of the said Lake Winnipegosis; thence northerly, following the line of the said easterly shore of the said lake to the southerly end of the portage leading from the head of the said lake into Cedar Lake, known as the "Cedar" or "Mossy Portage;" thence northerly, following the trail of the said portage, to the north end of the same on the shore of Cedar Lake; thence due north, to the northerly limits of Canada; thence easterly, following upon the said northerly limits of Canada, to the northerly extremity of Hudson's Bay; thence southerly, following upon the westerly shore of the said Hudson's Bay, to the point where it would be intersected by a line drawn due north from the place of beginning; and thence due south, on the said line last mentioned, to the said place of beginning; shall be, and is hereby set apart as a separate district of the said North-West Territories by the name of the District of Keewatin.

---

* Journals Leg. Assembly, 1875-6, Vol. 9, p. 4.

† Dom. Act. 39 Vic., chap. 21. Assented to 12th April, 1876.

THE RIGHT HONOURABLE GEORGE G. GOSCHEN, GOVERNOR OF THE HUDSON'S BAY COMPANY, TO THE SECRETARY OF STATE (CANADA).

[From the Book of Arbitration Documents, p. 412. The foot notes are from the same place.]

HUDSON'S BAY HOUSE,

LONDON, 12th December, 1876.

SIR,—I have the honour to acknowledge your letters requesting information relating to the boundary between the Province of Upper Canada and the Territory held by the Hudson's Bay Company.

I enclose a map, No. 1, showing the Territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second. The map in question was prepared by Mr. John Arrowsmith, and was ordered by the House of Commons to be printed 31st July, and 11th August, 1857.*

I also enclose a statement, No. 2, prepared for the Company in 1857, with reference to the Parliamentary inquiry which took place in that year.† The boundaries were then asserted to be, on the side of the United States, by the 49th parallel of latitude; on the side of Canada, by the height of land whose waters flow into Hudson's Bay; and on the north by the Arctic Ocean.‡

At the time of the passing of the Quebec Act, 1774, the Company had not extended their posts and operations far from the shores of Hudson's Bay.§ Journals of the following trading stations have been preserved bearing that date, namely: Albany, Henley, Moose, East Main, York, Severn and Churchill.‖

These Journals give no information upon the subject of the boundaries between Canada and the Territory of the Company, nor was the question raised in 1748, when the House of Lords held an inquiry with reference to the Company's affairs as at that time conducted.¶

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

*This is map No. 186, p. 139 [Book Arb. Docs.].

†See extract from this Statement, p. 402 (Arb. Docs.). [The extract in question, at that page of the Book of Arbitration Documents, with the note there appended to it, is as follows:—

"As long as Canada was held by the French the opposition of wandering traders (coureurs des bois) was insufficient to induce the Company to give up their usual method of trading. Their servants waited at the forts built on the coast of the bay, and there bought by barter the furs which the Indians brought from the interior.[1]

"But after the cession of Canada to Great Britain in 1763, British traders following in the track of the French, penetrated into the countries lying to the north-west of the Company's territories, and by their building factories brought the market for furs nearer to the Indian seller.[1]

"The Company finding their trade seriously affected, extended the field of their operations, and sent parties to establish themselves in the interior. In process of time all smaller opposing interests were absorbed either by purchase or coalition in the North-West Company of Montreal, which thus became the sole rival and competitor to the Hudson's Bay Company. During many successive years a most disastrous contest was carried on between these two companies. Wherever one Company established a trading post, there at once the other Company also commenced operations. This system of close competition rapidly produced a general state of disorganization, resulting in scenes of violence and bloodshed between the Indians, the trappers and the traders, in the interests of the rival Companies."

[1] And the French had their forts and posts on the rivers and lakes of the northern watershed, and carried away the best of the trade, even pushing their operations to the very shores of the Bay, as at La Carpe, Temiscamingue, and on the east coast, to the north of Slude River. In the west the French had forts on nearly all the lakes and rivers—five of which on the Saskatchewan, one at its very source in the Rocky Mountains. See also evidence, pp. 395-6 [Arb. Docs.].

‡See map No. 186, p. 139 [Arb. Docs.].

§This admission of the Chairman of the Company agrees with the Company's Statement of 1857, hereinbefore referred to, and with what the French and their Canadian successors always claimed,—the territory they occupied being co-extensive with their claims. Thus it is admitted that the Company, up to 1774, had not proceeded far from the shores of the Bay, whilst on the other hand, it is clear that the French, up to 1763, had maintained themselves in, and carried off the trade of the interior almost up to these very shores,—of portions of which they were in actual possession. It follows, therefore, that the "southern boundary of the territory" granted to the Hudson's Bay Company, and contemplated in the Quebec Act, could not have been far from the shores of the Bay.

‖Not yet come to the hands of the Government of Ontario.

¶This Report of the Lords, dated 1749, is largely quoted from, pp. 395-400 [Arb. Docs.].

A map, No. 3, no doubt prepared for that occasion, and sent herewith, shows the extent of country to which these operations were then confined. *

At a subsequent period, namely in 1777, a map was published in London by John Andrews, giving the height of land, near Lake Abitibi and other quarters, and showing certain boundaries for the Province of Upper Canada. †

I am to request that the maps and documents accompanying this letter may be returned to the Company when the inquiry to which you refer has been completed.

I shall be glad if you find them useful for the purpose of defining the boundary line between the Dominion and Ontario.

I have, etc.,

GEORGE G. GOSCHEN.

The Honourable R. W. Scott,
Secretary of State for Canada, Ottawa.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE OPENING OF THE LEGISLATURE, 3RD JANUARY, 1877.‡

For the determination of the Provincial Boundaries by the agreed method of an arbitration, the appointment of a new arbitrator on behalf of the Province recently became necessary, the distinguished judge who was to occupy that position having requested to be relieved from it. Meanwhile, a provisional line had been mutually determined upon in terms of the resolution of the Legislative Assembly at a former session; a considerable amount of additional materials for the ascertainment of the ultimate boundaries had been collected; a new and an exhaustive statement of the case of Ontario had been prepared; and a considerable part of the documentary and other evidence affecting the questions at issue had been printed. Almost everything is now ready for the final decision, within a few months, by able and competent referees, of questions which for two centuries have given occasion to keen controversy, and often to fierce conflicts between the nations, as well as the great public bodies who have from time to time claimed portions of the disputed territory.

AN ACT OF THE LEGISLATURE OF MANITOBA FOR THE DEFINITION OF THE BOUNDARIES OF THAT PROVINCE.§

Whereas the boundaries of the Province of Manitoba, as defined by the Act of Canada commonly called the Manitoba Act, and passed in the thirty-third year of Her Majesty's reign, have never been surveyed; and whereas, in consequence of the uncertainty arising therefrom, questions of jurisdiction in civil and criminal matters may arise; and whereas it is desirable to obviate such inconvenience by the temporary adoption of certain known and defined lines as the boundary of the Province; and whereas under authority of the Act of the Parliament of the United Kingdom of Great Britain and Ireland passed in the session held in the thirty-fourth and thirty-fifth year of the reign of Her Majesty Queen Victoria, which may be cited as the British North America Act of 1871, the Parliament of Canada may, with the consent of the Legislature of any Province of the Dominion, alter the boundary of any such Province;

Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

[*The two next following notes are from the Book of Arbitration Documents.—G. E. L.*]

* This is map No. 80, p. 136 *o* [Arb. Docs.].

† This is map No. 155, p. 166 *ff* [Arb. Docs.]. The Province of Upper Canada had not then been created. The boundary line given is an imaginary one, without any authority.

‡ Journals Leg. Assembly, 1877, Vol. 10, p. 2.

§ Manitoba Stat., 40 Vic., cap. 2. Assented to 28th February, 1877.

1. The Legislature of Manitoba agrees and consents that the limits of the Province may be altered by the Parliament of Canada by the temporary establishment of certain known and defined lines as the boundaries of the Province, in place and stead of the boundaries established by the Act of Canada passed in the thirty-third year of Her Majesty's reign, and chaptered three; and which boundaries that may be so established, and which are hereby consented to, shall be as follows:—

Commencing at the intersection of the international boundary, or forty-ninth parallel of north latitude, by the westerly boundary of township number one in the twelfth range west of the principal meridian in Manitoba; thence due north, following the westerly boundaries respectively of townships one and two, to the intersection thereof by the southerly limit of the road allowance on the first correction line; thence due west along the latter to the intersection thereof by the westerly limit of township three in the aforesaid twelfth range west; thence due north, following the westerly limits respectively of townships three, four, five and six in the said twelfth range, to the southerly limit of the road allowance on the second correction line; thence westerly upon the latter to the intersection thereof by the westerly limit of township seven in the aforesaid twelfth range; thence due north, upon the westerly limit respectively of townships seven, eight, nine and ten, to the southerly limit of the road allowance on the third correction line; thence due west along the latter to the intersection thereof by the westerly limit of township eleven in the said twelfth range west of the principal meridian; thence due north along the westerly limit respectively of townships eleven, twelve, thirteen and fourteen, to the southerly limit of the road allowance on the fourth correction line; thence westerly along the latter to the intersection thereof by the westerly limit of township fifteen in the said twelfth range west of the principal meridian; thence due north along the westerly limit respectively of townships fifteen, sixteen and seventeen in the said twelfth range west, to the southerly limit of the road allowance, the northerly boundary of the said township number seventeen; thence due east, following the said southerly limit of road allowance between townships seventeen and eighteen in the system of Dominion lands surveys (the said line crossing Lakes Manitoba and Winnipeg), to the easterly boundary of township seventeen in the tenth range east of the principal meridian; thence due south along the easterly boundary respectively of townships seventeen, sixteen and fifteen, to the southerly limit of the road allowance on the fourth correction line; thence due west along the latter to its intersection by the easterly limit of township fourteen in the aforesaid tenth range east; thence due south along the easterly limit respectively of townships fourteen, thirteen, twelve and eleven, to its intersection with the southerly limit of the road allowance on the third correction line; thence due west along the latter to its intersection with the easterly limit of township ten in the said tenth range east; thence due south along the easterly limit respectively of townships ten, nine, eight and seven, to the intersection thereof by the southerly limit of the road allowance on the second correction line; thence due west along the latter to its intersection with the easterly limit of township six in the said tenth range east of the principal meridian; thence due south along the easterly limit respectively of townships six, five, four and three, to the intersection thereof by the southerly limit of the road allowance on the first correction line; thence due west along the latter to its intersection with the easterly limit of township two in the said tenth range east; thence due south along the easterly limit respectively of townships two and one, to the intersection thereof by the forty-ninth parallel of north latitude, or the international boundary line aforesaid; and thence due west, following upon the said forty-ninth parallel of north latitude, or the international boundary line, to the place of beginning:

Provided always, that that portion of the eastern boundary of the Province hereby consented to be established which has not yet been surveyed, as also that portion of the northern boundary which has not been surveyed, shall be forthwith surveyed and marked out on the ground by the proper authority of the Dominion of Canada.

2. Nothing in this Act contained shall be held to repeal or innovate in any way upon the Act passed by the Legislature of Manitoba, in the thirty-seventh year of Her Majesty's reign, intituled An Act to provide for the enlargement of the boundaries of Manitoba on equitable terms, and the said Act shall continue in full force and effect.

Messrs. Bischoff, Bompas and Bischoff, Agents of the Dominion, to the Secretary of State (Canada).

[From the Book of Arbitration Documents, p. 413. The foot notes are taken from the same place.]

4 Great Winchester Street,
London, E.C., 22nd March, 1877.

Sir,—We beg to report that we have been engaged almost continuously since the date of your last letter in searching the records of the Hudson's Bay Company, and regret that our efforts have not been crowned with more satisfactory results.

The only important documents which we have found are two maps, which we did not get in time to despatch by this mail, but which shall be forwarded to you by the next.

The first and smaller of these maps defines the boundary of the Province of Quebec as settled after the Treaty of Utrecht,—a red line being drawn, and the words "The French and English respectively not to pass this line" being written thereon.*

The second is a large map of North America, published in 1755,† by one Mitchell pursuant to Act of Parliament and under authority of the Board of Trade. This map draws the boundary line between the Hudson's Bay Territory and New France as extending along "the height of land" as far as the "Lake of the Woods," and there stops, owing as we imagine to there not being at that period any accurate knowledge of the country lying westward of that point.‡ You will observe that at the point where the boundary line stops, it is running in a south-westerly direction, and here consequently, if continued, would completely cut off from New France the whole of the Red River Territory.§

Both these maps are important as showing that after the Treaty of Utrecht a boundary was fixed between the English and French Territories, as far as knowledge of the country would enable it to be done,‖ and that the claims of the French westward so

---

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* This is map No. 36, p. 136*g* [Book of Arb. Docs.]. It was really made in 1709.

† The map here referred to is the *second edition* of Mitchell's Map, as to which see full notes to map No. 86, pp. 136*t*, *u* [Arb. Docs.]. The boundary line, it will be noticed is, in some places, north of the height of land. Many subsequent maps which extend further west, show the same line as this one, stopping at the like terminal point,—the western boundary running thence due north, or northerly along the eastern shores of Lake Winnipeg. As to the country westward of the point mentioned, it is matter of history that the Verendryes traversed and traded through the whole Winnipeg basin before 1750; that they built forts on Rainy Lake and Lake of the Woods in 1731-2, and very shortly afterwards on the Winnipeg, Red and Assiniboine Rivers, taking possession also of the Upper Missouri and its tributaries to their source. They subsequently extended their forts on the lakes and rivers northwards to the Saskatchewan, on which they and their successors had, up to 1755, built no less than five forts—one at the base of the Rocky Mountains. They thus commanded the whole trade of that vast region, which they called the Post of the Western Sea. (See the articles *ante* [Arb Docs.], Les Varennes de la Verendrye, and Bougainville on the French posts.) There is ground for believing that they even penetrated before 1763 to the Athabaska country, and made it and the upper reaches of the Churchill, tributary to their forts on the Saskatchewan. Up to this period, their trade had never been disturbed, nor had any others claimed a right to it; and for eleven years more, no servant of the Hudson's Bay Company had set his foot there. The cession of Canada caused some of the old French commandants to retire from those western posts; but a good many remained, retaining the old forts and the trade, and the old *voyageurs*. These, soon after the cession, received from Canada, reinforcements in men (both French and English) and merchandise for barter; and they and their successors quickly spread themselves over the whole western territories—to the Pacific and to Alaska, and even to the Frozen Ocean. The earliest post of the Hudson's Bay Company in these inland parts was Cumberland House, on Sturgeon Lake, built by Hearne in 1774; and their next post was built in 1790, when their first establishment on the Red River, or rather Red Lake, was founded. (See the present letter (p. 256 of this vol.) as to their posts.)

‡ The French knew it well—see preceding note.

§ See note †, above.

‖ No such boundary was ever run, of which ample proofs, including admissions of the Hudson's Bay Company, are to be found in this book [of Arb. Docs.]. See pp. 372-4, 176-8 [Arb. Docs.], also note to map, No. 83, p. 136*p*, *ante* [Arb. Docs.]. The note in question is there given as follows:

It is a fact now placed beyond dispute, that the limits between Hudson's Bay and Canada were never settled, pursuant to the stipulations of the Treaty of Utrecht in that behalf. The Hudson's Bay Company's proposals, in 1712 and subsequently, for a line from Cape Perdrix (afterwards adopted by the British

far as the Rocky Mountains, and northward to the Saskatchewan, must be without foundation, as that at the date of the map (1755), the country was only known to geographers to points far short of the pretended limits.*

We also found another map of the Province of Quebec, according to Royal proclamation of 7th October, 1763, from the French surveys. We have not sent this map, as the north-westerly boundary is the same as in the first above-mentioned map, ending at the corner of Lake Nipissing, lat. 46, long. 78.

From a perusal of the Company's journals, we find that it was not the practice of the Company's servants to go up country to purchase peltry from the Indians; but the

---

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

Government in their instructions to the commissaries), and the proposals of these commissaries, in 1719 for a line from Davis's Inlet—in each case extending to, and westward along the 49th parallel—were indignantly scouted by the French, and no agreement was then, or at any time afterwards, arrived at. The statements made in various English maps and books (and which we have first met with in this map), to the effect that certain lines therein given or mentioned were boundary lines of Hudson's Bay, according to or as settled by commissaries under the Treaty of Utrecht, are entirely without foundation, and probably had their origin from over zealous friends of the Company by whom the authors of these publications were, intentionally or unintentionally, misled; and the error thus first published, was probably adopted in good faith by many subsequent geographers and writers, who incorporated it in their works as an unquestioned fact, and so propagated the error that it was generally believed in as true. Even the commissioners in certain of the boundary negotiations between England and the United States, were thus imposed on. It was claimed on behalf of the latter, and apparently conceded on behalf of the former country, that the parallel of 49° had been settled upon, under the Treaty of Utrecht, as the southern boundary line of Hudson's Bay; and thereupon, and upon that ground, that parallel was fixed as the northern boundary of Louisiana! The variety of the lines confidently referred to by English geographers and others, as having been settled as bounds of Hudson's Bay, would carry in itself the refutation of the statement. Then we have on the French side the statements by Gallisonnière, in 1750, and by Choiseul, as late as 1761, that these limits were never settled. If such a settlement, so favourable to the Hudson's Bay Company, had ever been arrived at, that Company would certainly have preserved a record of it. Not only is this not the case, but the Company subsequently preferred a claim to have the limits fixed on an entirely different basis; and to crown all, recent investigations in London on behalf of the Government of Ontario, have brought to light certain documents, dated 1755 and 1759 respectively (given in Section XVII. *post*), whereby it most clearly appears, on the admission of the Hudson's Bay Company themselves, that no boundaries of Hudson's Bay had, up to those dates, been settled pursuant to the Treaty of Utrecht. A diligent search in the English and French archives has failed to show anything to the contrary. (For other information on this subject, see Greenhow's *History of Oregon*, etc., pp. 281 *et seq.*, and App. F; Twiss's *Oregon Question*, pp. 207 *et seq.*; Papers in Sec. XVII. [of Arb. Docs.]; and *Oregon: our Right and Title*, by Wyndham Robertson, Jun., of Virginia. Washington, 1846. This latter is to be found in Vol. 287 of Canadian Pamphlets, in the Library of Parliament, Ottawa.)

France claimed that in *restoring* Hudson's Bay to the English under the Treaty of Utrecht, she was bound only to *restore* to them such forts and limited territory, on the immediate shores of the Bay, in their vicinity, as had at any time theretofore been—whether rightfully or wrongfully—in their actual possession; and she maintained for herself, and in fact exercised, the right to dominion over, and to carry on trade and erect posts and fortifications in all the interior country, and even to extend her trading operations to the shores of the Bay, where these shores were not in the possession of the English. As evidence of this, witness the maintenance of old, and the establishment of new posts on Lakes Mistassin, Nemiscau, Abbitibis, La Carpe, and St. Anne (Albany), and on the Rivers Moose and Albany—all north of the height of land. (See in Sec. XVII. [Arb. Docs.]; the two Memoires of D'Auteuil; that of April, 1755; those of Lamothe-Cadillac and Gallisonnière respectively; and the grant to Sieur Simblin. See also, p. 205 [Arb. Docs.], the ordinance as to the limits of Tadoussac.) Besides, the Hudson's Bay Company has, in the most formal manner, and in printed documents, admitted what is otherwise abundantly evident, that up to 1763, their trade and territorial occupancy were confined to the shores of the Bay. (See their statement of 1857, Sec. XVII. [Arb. Docs.].)

In their Memorial of 1719, the Company admit that "the surrender of the Straits and Bay has been made according to the tenour of the Treaty, at least in such manner that [they] acquiesce therein, and have nothing to object to or desire on that head." We have been unable to get evidence of what, besides Fort Nelson, was actually delivered to the Company on the occasion rererred to; it is supposed to have been the other forts, only, on the shores of the Bay; but we have, on the other hand, ample evidence as to what was *not delivered* to the Company, viz.: the French posts, forts and territories in the interior beyond the height of land as aforesaid; some of these territories even extending to the shores of the Bay.

* This is a mistake, as shown in note †, [p. 254 of this vol.] It may be added here, that there is good reason to believe that the French traded and explored in the north-west before the middle of the seventeenth century. We find some of them in the Sioux countries about 1640; Radisson and Des Grosseliers were at Lake Winnipeg and on the Assiniboine in 1666, trading with the natives; and no doubt many others, of whom we have no record, did the same. A fort was built at Kamanistiquia in 1679, in which year Du l'Hut took possession of the country of the Sioux. St. Lusson had, eight years before, taken possession of all the countries of the North and North-West by consent of all the nations that inhabited them: and it will be seen from the note †, [p. 254 of this vol.] already referred to, what the progress of the French was in this direction, subsequent to 1731. (See as to these statements the account of Sieur Nicolet's explorations, about 1640, in Mr. Mill's last Report, and Journal de l'Instruction Publique; as to Radisson and Des Grosselliers, various papers in this work; as to Du l'Hut, see Mr. Mills' Report and some papers in this book; as to St. Lusson, see Perrot's Account, *ante* [Arb. Docs.].)

Indians came down to York and other forts on the bay, and there exchanged their furs, etc., for the Company's merchandise.* It appears that the "pedlers" (French traders —*Coureurs des Bois*), as they were called, from Quebec, had for some time prior to the year 1773, gone up into the Red River district, and by so doing had cut off the Indians and bought their furs, and so prevented their taking them to York Fort and the other settlements and forts on the Bay.

It was to prevent this that in the year 1774, one Mr. Hearne was sent down to establish a station up country, which he accordingly did at Cumberland House.† In the same year Matthew Cocking started on a journey to the Red River District, but no settlement was made there until some fifteen years later. In his journal of this journey he mentions "that pedlers swarmed there every year." "An old pedler called 'Young Deer' residing there;" that "the natives were corrupted by the pedlers having so long resided there," and speaks of Franceways settlement on the Saskatchewan River.

These pedlers were both English and French, but seem to have come from Quebec, though there does not seem to be any authority for alleging that they were the discoverers of this Territory.‡

One Joseph La France, a French Canadian (Canadese) Indian, passed through the Red River Territory and Saskatchewan, on his way to York Fort, in the years 1739-42, and in his account of the journey makes no mention of having met any pedlers, or other foreigners, but only natives.§

This story is set out in the Appendix No. 2, to the Report of the Committee of the House of Commons, in 1849, a copy of which has been sent by the Secretary of the Hudson's Bay Company. A map of the country was also prepared by a Mr. Dobbs, who published the story, under the instructions of Joseph La France. It is fairly accurate, but of course shows no boundaries.‖ The whole country westward of Lake Winnipeg is left blank. The principal importance attaching to this story, we think, is that it precludes the Quebec pedlers from claiming that district by right of discovery. In one part he says the French never pass into the countries adjoining Lac la Pluie.¶

The following are the dates of the establishment of the earlier posts of the Hudson's Bay Company in this District:

Cumberland Ho**	1774	Brandon Ho	1794
Red Lake	1790	Edmonton Ho.	1795
S. Branch do.	1791	Carlton Ho.	1797
Lac la Pluie	1790	Lake Winnipeg	1795
Swan River	1790	Assiniboils River	1796
La Crosse, Athabasca††	1791	Red River	1799

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* Writers who have touched on the subject agree that the Indians first sold their finest and best furs to the French, and then proceeded to the Bay to sell to the English the heavy and inferior furs the French had refused. (See, amongst others, Robson, pp. 62-3, 79, etc.)

† See note †, [p. 254 of this vol.]

‡ The "discoverers" were their French forefathers; and subsequently, as to the more remote districts, themselves or their immediate descendants or successors—French and English Canadians.

§ Were he travelling in ordinary course, and not, as was really the case, attempting to escape justice and to keep away from the French traders, who would have been sure to deliver him up, he could have met them without trouble; for he shows such considerable knowledge of the country that he could not but know where to find their forts theretofore established, and then still subsisting. But he was, in fact, trading without a license,—an offence for which swift punishment would have been meted out to him if caught. He had been poaching within the licensed limits of some farmer of the revenue, had secured cargo for his canoes, and was proceeding on his route to the lower countries—perhaps to Orange—when he was met by a detachment of troops going to the upper posts. Well knowing his fate should the commander of the troops question or suspect him, he left his furs and took to the woods and ultimately found his way to the English at Hudson's Bay. (See Report of 1749.)

‖ This is map No. 74, p. 136*n*, *ante* [Arb. Docs.].

¶ We have already shown that they had a fort there in 1717.

** See as to this, note †, [p. 254 of this vol.] It may be further added here, that before the Company established any other fort, the Canadian fur traders—and especially their great companies, culminating in the North-West Company, of Montreal—had penetrated to the Northern and Western Oceans, building forts and settling agents in all parts of the territories; and that the Hudson's Bay Company, instead of striving to lead their rivals, contented themselves by following them at some interval, and securing such portions of the trade as the others had allowed to pass by. (See section, "Canadian Enterprise in the North-West" [in Arb. Docs.].)

†† This post was on the waters of the Churchill. Canadian establishments had been formed on or near Lake Athabasca over twenty years before.—*Ib.*

We apprehend the maps as coming direct from the custody of the Hudson's Bay Company, prove themselves. We have not taken extracts from the Post Diaries, inasmuch as we can trace no direct evidence calculated to support counsels' theory of prior discovery by the Hudson's Bay Company,* and the foregoing repulses [reflects] the general impression produced upon our minds by perusal of the Post Diaries, as also of sundry published histories of the district in the Company's Library, such as "Robson's Hudson's Bay," published 1752; "Remarks upon Capt. Middleton's Defence, by Arthur Dobbs," 1744; and "Carver's Travels in North America," 1766.

As we have given the Company an undertaking that the two maps shall be returned to them when done with, we should deem it a favour if you would give directions for their receipt to be acknowledged on arrival, and for their return to us when done with.

We have the honour to be, Sir,

Your most obedient servants,

BISCHOFF, BOMPAS & BISCHOFF.

Hon. R. W. Scott, Ottawa.

SIR JOHN ROSE TO THE HON. ALEX. MACKENZIE, PREMIER OF THE DOMINION.

[From the Book Arb. Docs., p. 415. The note also is from the same place.]

BARTHOLOMEW LANE, E.C.,

September 26th, 1877.

The Minute of Council requesting that Mr. Crooks be accredited in reference to the boundary between Ontario and the Dominion, has reached me by last mail.

You have already heard by my previous letter that Mr. Crooks had sailed. I may mention, however, that even if he had remained, I do not think any research would have thrown more light on the matter than his Government is already in possession of. I employed a gentlemen for several weeks to search at the Colonial Office and Foreign Office, as well as the Rolls' Office, and the Hudson's Bay archives, and every scrap of information bearing on it was, I think, sent out either to Mr. Campbell, whilst he was Minister of the Interior, or to Mr. Scott, some months ago. I mention this to satisfy the Ontario Government; as I believe that any further search would be attended with no result.†

Believe me to be,

Yours ever faithfully,

JOHN ROSE.

The Hon. Alex. Mackenzie, Ottawa.

MR. MCDERMOTT, AN AGENT OF SIR JOHN ROSE, TO SIR JOHN ROSE.

[From the Book Arb. Docs., p. 416. The notes appended are from the same place.]

SIR JOHN ROSE,—In accordance with your instructions I have been engaged for some time past in searching among public documents for papers or maps defining the western and northern boundaries of the Province of Ontario.

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* In face of the known facts appearing in this book, no legitimate prior discovery on the part of the Hudson's Bay Company can possibly be made out.

† Some valuable evidence—forming part of this supplementary section XVII. [Book Arb. Docs.] was afterwards procured in England by the Agent of the Ontario Government; such, for instance, are the three documents, dated 1699, pp. 349 *et seq.*; Papers relating to the Commissaries, pp. 360, etc.; Claims of Hudson's Bay Company, 1752-9, pp. 376, etc.; and the Order in Council of 24th Aug., 1791, pp. 348, 411,

Having been informed that you had yourself investigated the collection of maps in the Foreign Office Library, the greater portion of which had been removed to the National Record Office in Rolls' Court, I commenced my search in the library of the latter department, receiving for several days the sole attention of Mr. Kingston, the librarian, whose assistance, I need hardly say, saved much time and labour. I may at once state that my search has been unsuccessful. The facts and quotations supplied by you have all been easily verified, but the closest search has given no clue to the discrepancies, and no additional information in regard to disputed points.

In the first place, with regard to the western boundary line of the Province of Ontario as laid down by 14 George III., cap. 83, no minute of the Privy Council nor any public documents of that time give any definition of the vague term "northwards," nor do any of the maps of Canada indicate any boundary whatever in this region.* The *second edition* of Mitchell's Map of 1755, in this respect does not differ in any particular from the first edition. One of Mitchell's Maps in the collection, I may add, is the identical one used by the Commissioners in settling the boundary line after the revolutionary war, and on it the western boundary line of the United States follows the course of the Mississippi northwards from its conflux with the Ohio.

With reference to the district in Michigan governed by Mr. Hay, I found among the papers of Governor Haldimand a Petition from the inhabitants of Detroit, forwarded in 1783, by a Lieutenant-Governor Hay; but amidst this very voluminous correspondence I could find no further mention of this gentleman; and no patent of his appointment exists. Such patent, I am told, would certainly be upon the Rolls had his appointment emanated from this side.

As to the line of division between Upper Canada and Hudson's Bay Territory, I can find no explanation of the discrepancy pointed out by you between the definitions of the boundaries of Upper and Lower Canada, as given in the Proclamation of Governor Alured Clarke in 1791, and that assigned in the letters patent of the Earl of Elgin in 1846. I have read carefully through the draft instructions to the Earl of Elgin and all the correspondence relating to his appointment, but can find no mention of any reason for extending his jurisdiction to the shores of Hudson's Bay, nor indeed any allusion to boundaries other than incidentially to matters in dispute between Canada and New Brunswick. The explanation given by you that the difference may be due to a slip of the pen would seem to be correct. Subsequent research among the papers at the Colonial Office affords no other explanation.† I may mention here that the Order in Council dividing Upper and Lower Canada is dated 24th August, 1791, upon a Report from the Lords of Committee of Council, dated 17th August, 1791.‡

The boundaries of the Hudson's Bay Company, as defined by the treaty of Utrecht, are shown on both editions of Mitchell's map as following the height of land which forms the watershed of rivers running southward to the Lakes or northward to the Bay. I do not find, however, in the Records and Correspondence of the Commissioners of Trade and Plantations (which consist of documents in French, Latin, and English), any mention of a decision arrived at by the Commissioners appointed to fix this boundary matter and other disputed questions. Neither could the Secretary of the Hudson's Bay Company afford me any information on this point. He states that the Company have no maps illustrating the question, and that it was always understood that their territory comprised the land in which the waters flowed to the northwards, thus fixing the boundary at the height of land before mentioned. He says he will look through the documents of the

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* There are several maps (see Notes on Maps, sec. VIII. *ante* [Arb. Docs.]), showing the Mississippi to its source as the western boundary of British Canada and Quebec, respectively. The short period during which the Mississippi remained the real boundary of Provinces, viz.: 1774 to 1783, or perhaps to 1791-4—has caused a scarcity of such maps.

† If, as would seem, this difference relates to the words in the one document "until it strikes the boundary line of the Hudson's Bay," and in the other "until it reaches the shore of Hudson's Bay" (both referring to the inter-provincial boundary), it certainly cannot have been due to "a slip of the pen," for there are five other Commissions, 1838-46, containing exactly the same phrase as Lord Elgin's (See English Commissions, in Arb. Docs.).

‡ See this Order, pp. 388, 411 [Arb. Docs.].

Company, but he holds no expectation of finding anything conclusive of the matter. Should he do so, he will at once communicate with you.

Under these circumstances I have thought it best to communicate at once to you the result of my inquiries. Mr. Kingston, the Librarian of the Record Office, joins me in the belief that no more precise information exists on the subject, and all the older maps show that so little was known at the time, of the regions in question, that inaccuracies and discrepancies in the description of boundaries would appear to be inevitable.

E. R. McDermott.

Extract from the Speech of His Honour the Lieutenant-Governor of Ontario, on the Opening of the Legislature, 9th January, 1878*

There has been another unexpected delay in procuring a settlement of the important subject of the boundaries between Ontario and the adjoining territories of the Dominion; the absence from America of the distinguished gentleman selected as third arbitrator having made a settlement during the year impossible. The delay has been made use of to collect further facts and documents from the public archives in London and Paris, as well as from the records in possession of the Hudson's Bay Company, and from various public libraries in Europe and America. The result of these and other investigations has been embodied in an important supplement to the papers already printed for the use of the arbitrators. Copies will be laid before you. The three arbitrators are believed to be now ready to enter on the arbitration as soon as may suit the arrangements of the two Governments.

Mr. Scoble, Agent of the Government of Ontario, to the Attorney-General of Ontario.

[From the Book of Arb. Docs., p. 417. The foot notes are from the same place.]

Toronto, March 18th, 1878.

Sir,—It having been deemed important that a search should be made for further evidence bearing on the limits of Ontario to the west and north, I received instructions from you on the 16th October last, to proceed to Paris and London for the purpose of searching the archives relating to the history of the country, with a view to procure such further evidence.

Arriving in London on the 30th October, I presented my letter of credence to Sir John Rose, and by him was furnished with a letter to the Secretary of State for the Colonies; by whom, upon learning that my immediate intention was to proceed to Paris, I was furnished with a letter to Lord Tenterden, Under-Secretary of State for Foreign Affairs, who gave me letters to the British Ambassador in Paris. With these credentials I left London for Paris on the 3rd November, and on the 5th November I presented my letters to Lord Lyons, and was furnished by him with letters to the Minister of Marine and Colonies, the Minister of Foreign Affairs, and the Minister of the Interior. I lost no time in presenting these, and stating the objects of my visit to the various Ministers; but owing to the unsettled state of French politics, and the changes in the *personnel* of the Ministry (there having been *five* successive changes of Ministry during the month of November), I found it very difficult to procure immediate attention. Pending the official permission to search the public archives, I busied myself in the splendid libraries of Paris, where I found much information which was collaterally useful to me, and where I saw and made notes of large numbers of maps published between 1713 and 1763. I was

* Journals Leg. Ass., 1878, Vol. 11, p. 3.

also sufficiently fortunate to establish friendly relations with M. Pierre Margry, whose historical writings upon the early history of North America are so well known. Through his advice, and aided by his extensive knowledge of all matters relating to the early history of Canada, I was enabled to commence my researches at a point very far in advance of that which I should otherwise have done.

Having at last procured the required permission to search the archives of the Marine and Colonies, a new difficulty presented itself. Monsieur Le Bon, the Sous-Directeur of the Department, was one of the Commissioners appointed to arbitrate between France and England upon the question of the Newfoundland Fisheries, and I found it difficult to disabuse his mind of the idea that my investigations had some relation to this subject. Consequently, my researches were carried on under certain restrictions. All the extracts I required were submitted to his eyes before I was allowed to use them; and copies were made, by the clerks of the Department, of such matter only as he judged could not be used in relation to Newfoundland. I am of the opinion, however, that the copies of the documents which I forwarded to you contain all the evidence that can be procured from that source which is material for the present purpose. I am sustained in this belief by the opinion of Mons. Margry, who was aware of the nature of my mission, and with whom I conversed frequently as to the discoveries I made, and as to the existence of further evidence.

With respect to the reference which was made in letters* that passed between the Marquis de Torcy and Mr. Prior, and between Mr. Prior and Lord Bolingbroke in 1713, to a map or maps that had been furnished to the Commissioners of both countries, defining the extreme pretensions of each, the most diligent search on my part, both in London and Paris, failed to bring these maps to light, although I was sufficiently fortunate to discover the original letters which accompanied them. I found a map,† however, in the Depôt des Cartes de la Marine, in Paris, which bore certain autograph lines upon it, that were marked as lines "according to the pretensions of the English" and "according to the memoir of M. D'Auteuil"‡ respectively. The first of these lines is that claimed by the memorial of the British Commissaries presented through Lord Stair in 1719,§ as being the boundary desired by the Commissaries appointed by Great Britain under the Treaty of Utrecht. The second is probably that boundary which France, as a last resort, was willing to concede. The lines are drawn upon a map published by Guillaume de L'Isle in 1703, and the lines in question doubtless furnished the data for the lines shown in the subsequent editions of De L'Isle's maps, which, however, followed D'Auteuil's memoire more closely than the original map. M. D'Auteuil was, at the time of his "memoires," "Procureur General" in Canada, and was engaged in Paris in and after 1719 in the preparation of the French case for consideration of the Commissaries under the Treaty of Utrecht.

During my stay in Paris, I examined some hundreds of maps, many of them original, relating to French discoveries in N. America, and made full notes as to the information furnished by upwards of sixty of them. As, however, subsequent research proved many of them to have been geographically incorrect, and they bore little or no value as historical references, I did not consider it necessary to send you more than a few of the most important.

Returning from Paris to London on the 9th December, I commenced my researches by looking at the maps in the Colonial and Foreign Offices, but without finding any maps of special value in reference to boundaries.

I received much assistance in my search in the Foreign Office from E. Hertslet, Esq., C.B., whose acquaintance with the Treaties concluded by Great Britain enabled him to give me much valuable information. My researches served to prove that no authentic

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* See letter, Prior to Bolingbroke, p. 153 [Arb. Docs.]

† This is Map No. 133, p. 136*f* [Arb. Docs.]

‡ For this Memoir, see p. 368 [Arb. Docs.]

§ For this Memoir, see p. 365 [Arb. Docs.]

map exists in the Colonial Office, the Foreign Office or the Public Records Office defining the extent of country ceded by the French in 1763.*

I found a map published by Arrowsmith, in 1795, in the Foreign Office. This map is inscribed, "by permission to the Hon. Governor and Company of Adventurers trading into Hudson's Bay, in testimony of their liberal communications," and gives no boundary under the Treaty of Utrecht, but bears the letter U in Upper Canada, on the parallel of 50°, and the whole word "Upper" *north of the height of land;* whilst in an edition of the same map, dated 1795, but, as I ascertained from the publisher, *published in 1850*, the words "Upper Canada" have been erased from the original position, and re-engraved close to the shore of Lake Superior, *south of the height of land.*

My researches in the Public Records Office were materially aided by Mr. Kingston, the librarian, through whose kindness I procured copies of important documents and correspondence having reference to the English Commission, under the Treaty of Utrecht.

Some of the documents forwarded from France having failed to reach you, I returned to Paris on the 11th January, completed my researches, and going back to London, left for Canada on the 25th February, arriving here on the 15th inst.

In conclusion, I beg respectfully to point out the difficulties which encompass research into such a matter as that with which I have been charged. The examination of the records of nations like those of Great Britain and France, must needs be laborious, even under the most favourable circumstances; but considering that I had been preceded in my researches by many gentlemen, who gave much time and study to the subject, I feel that I have been fortunate in being able to bring to your notice documents that have never been produced before in all the course of the discussion of the boundary question, as to the claims of the Hudson's Bay Company, and as between the Dominion and this Province. Trusting that the result of my labours has been satisfactory to you,

I am, Sir,
Your obedient servant,

Hon. O. Mowat, M.P.P.,
Attorney-General, etc., etc., Toronto.

THOS. C. SCOBLE.

[*The following notes are from the Book of Arbitration Documents.—G. E. L.*]

* By the Treaty of 1763, the Mississippi, from its source to the . . . sea, was declared to be the boundary between Louisiana and the English possessions. The previous boundaries of Louisiana were, on the north and north-east, the northern and north-eastern watershed of the Missouri from its source in the Rocky Mountains to its junction with the Mississippi—the Illinois country being at times within and at times without the bounds and jurisdiction of Louisiana. (See the official description, pp. 41-2. [Arb. Docs.] The French maps coucur, as a rule, in the same boundaries.)

This northern boundary of Louisiana, was, prior to the cession, undoubtedly the southern boundary of Canada, in that direction, up to the sources of the Missouri; and whilst Louisiana was confessedly limited to the Rocky Mountains, the French always claimed that Canada extended beyond those mountains to the Western and Pacific Seas,—having for southern boundary in those quarters New Albion or New Mexico, as the case might be. No geographer or historian has ever claimed that the countries north of Louisiana, and indefinitely westward, were other than part of Canada; sometimes they are referred to, when beyond the limit of actual discovery, as "the unknown lands of Canada."

Through these unknown lands the intrepid French commandants and their followers pushed discovery and trade—always seeking for their goal, the Western Sea. They reached the Rocky Mountains, which they probably crossed; but it was left to their Canadian successors—French and English—to establish on the Pacific slope, the establishments which secured to them its trade, and to one of them—Sir Alexander Mackenzie—to secure the sovereignty of the territory, to the British Crown, west of the Rocky Mountains. (See Mackenzie's Travels, and the negotiations between the United States and Great Britain respecting the Oregon Question.) In the negotiations with the United States the western extension beyond the meridian of the source of the Mississippi could not be claimed by England by virtue of its having been English territory from the beginning, or of its having been French territory, not part of Canada.

It was claimed, westward to the Rocky Mountains, as a part of French Canada, and the claim was ultimately conceded. The Treaties of 1783 and 1794, made no change. By the Convention of 1818, however, the par. of 49° become by mutual consent the boundary between the two countries, from the Rocky Mountains eastward to the Lake of the Woods. It will be remembered that until the recent claims of the Hudson's Bay Company, no other country than Canada had ever claimed this western Territory, and that it had always been named and treated as part of Canada, whether French or English.

What France ceded then, in 1763, west of the meridian of the sources of the Mississippi, was the country bounded on the sonth by the parallel of the source of the Mississippi, westerly,—(1) to the South Sea or Pacific Ocean; or (2) to the northerly watershed of the Missouri, according to its situation as shown by maps and geographies of the time, and thence along such watershed to the Rocky Mountains, and thence westward to the Pacific; or (3) to the northerly watershed of the Missouri, as *now* known, and thence along such watershed to the Rocky Mountains, and thence westward to the Pacific.

MEMORANDUM OF THE MINISTER OF THE INTERIOR.*

DEPARTMENT OF THE INTERIOR,

OTTAWA, 24th April, 1878.

Memorandum.

Referring to the terms of the Order in Council dated the 8th July, 1874, relative to the provisional arrangement respecting the westerly and northerly boundaries of Ontario, intended to provide a joint system for the administration of the lands within the territories claimed by the respective Governments of the Dominion and Ontario, the undersigned has the honour to call the attention of Council to the fact that while all necessary provision is made therein for the confirmation eventually of any patents issued by either Government, it is not specifically mentioned in the said Order that any lease granted by either Government in the interim shall similarly be ratified.

The question has been brought under the notice of the undersigned, in connection with the lease recently authorized by Council to Mr. Macaulay for a timber limit situate in Keewatin, between the Lake of the Woods and Rainy Lake; and the undersigned having been advised by the Deputy Minister of Justice that it would be desirable to add the right of giving leases to that of making grants of land, to the respective Governments, over the country apportioned to each by the conventional boundary, respectfully recommends that communication be had with the Government of Ontario with that in view, the understanding to be that all such leases shall be ratified and confirmed, and that all bonuses, rents and royalties received by either Government for limits which may prove to be situate within the true boundaries of the other, shall be transferred in accordance with the Sections 3 and 4 of the Order in Council quoted.

Respectfully submitted.

DAVID MILLS,
Minister of the Interior.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 29TH APRIL, 1878.*

On a Memorandum, dated 24th April, 1878, from the Honourable the Minister of the Interior, having reference to the terms of the Order in Council dated the 8th July, 1874, relative to the provisional arrangement respecting the westerly and northerly boundaries of Ontario, and recommending that communication be had with the Government of Ontario, with a view to an understanding that all leases shall be ratified and confirmed, and that all bonuses, rents and royalties received by either Government for limits which may prove to be situate within the true boundaries of the other, shall be transferred in accordance with the Sections 3 and 4 of the Order in Council quoted.

The Committee submit the foregoing recommendations for your Excellency's approval.

Certified.

W. A. HIMSWORTH,
C. P. C.

Hon. Minister of the Interior.

THE UNDER-SECRETARY OF STATE TO THE PROVINCIAL SECRETARY.†

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 1st May, 1878.

SIR,—I am directed to transmit to you herewith, for the information of His Honour the Lieutenant-Governor of Ontario, a copy of an Order of His Excellency the Governor-

* Ho. of Coms. Return, 19th March, 1881, No. 37, p. 23. † *Ibid.*, p. 24.

General in Council, and of the Memorandum of the Honourable the Minister of the Interior therein referred to, respecting the terms of the Order in Council of the 8th July, 1874 (of which a copy was communicated to the Lieutenant-Governor on the 22nd of that month), relative to the provisional arrangement with regard to the westerly and northerly boundaries of Ontario.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

Hon. Provincial Secretary, Toronto.

THE ASSISTANT PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.*

PROVINCIAL SECRETARY'S OFFICE,
TORONTO, 3rd May, 1878.

SIR,—I have the honour to acknowledge the receipt of your letter, transmitting copy of an Order in Council and of the Memorandum of the Honourable the Minister of the Interior therein referred to, respecting the terms of the Order in Council of 8th July, 1874, relative to the provisional arrangement with regard to the westerly and northerly boundaries of this Province, and to inform you that the subject will be submitted to His Honour the Lieutenant-Governor.

I have the honour to be, Sir,

Your obedient servant,

I. R. ECKART,
Assistant Secretary.

Hon. Secretary of State, Ottawa.

REPORT OF THE ATTORNEY-GENERAL OF ONTARIO.†

Referring to the terms of the joint memorandum signed by the Hon. David Laird, formerly Minister of the Interior of the Dominion of Canada, and the Hon. T. B. Pardee, Commissioner of Crown Lands of this Province, fixing a temporary conventional boundary of the Province of Ontario on the west and north, and adopting a system for the sale of lands and for adjusting disputed rights in the territory claimed by both Governments, and which memorandum was approved by His Excellency the Governor-General upon the eighth day of July, 1874, and by His Honour the Lieutenant-Governor of Ontario on the ninth of the same month, the undersigned has the honour to report that an Order of His Excellency the Governor-General was passed on the 29th April, 1878, in which attention was called to the fact that while all necessary provision is made by the said memorandum for the confirmation eventually of any patents issued by either Government, that it is not mentioned that any lease granted by either Government in the interim shall be similarly ratified, and recommending that communication should be had with this Government, with a view to an understanding that all leases should be ratified and confirmed, and that all bonuses, rents and royalties received by either Government for limits which might be proved to be situate within the true boundaries of the other should be transferred in accordance with sections three and four of the said memorandum.

---

* Ho. of Coms. Return, 19th March, 1881, No. 37, p. 24. † *Ibid.*, p. 25.

The undersigned respectfully recommends that an Order in Council be passed declaring that all leases and licenses and applications therefor, shall be subject to the stipulations contained in the said memorandum in respect of patents of lands and applications therefor, and that all bonuses, rents and royalties received by either Government for limits which may prove to be situate within the true boundaries of the other shall be transferred in accordance with the provisions of the third and fourth sections of the said memorandum as extended by such Order.

O. Mowat,
Attorney-General.

7th May, 1878.

Order in Council, approved by the Lieutenant-Governor, the 9th day of May, 1878.*

Upon consideration of the Report of the Honourable the Attorney-General, the Committee of Council advise that it be declared that all leases and licenses and applications therefor, shall be subject to the stipulations contained in the joint memorandum signed by the Honourable David Laird, formerly Minister of the Interior of the Dominion of Canada, and the Honourable T. B. Pardee, Commissioner of Crown Lands of this Province, fixing a temporary conventional boundary of this Province on the west and north, and adopting a system for the sale of lands and for adjusting disputed rights in the territory claimed by both Governments in respect of patents of lands and applications therefor; and further, that all bonuses, rents and royalties received by either Government for limits which may prove to be situate within the boundaries of the other, shall be transferred in accordance with the provisions of the third and fourth sections of the said memorandum as extended by this Order.

Certified.

J. G. Scott,
Clerk Executive Council.

The Assistant Provincial Secretary to the Secretary of State.*

Toronto, 11th May, 1878.

Sir,—With reference to the correspondence that has taken place respecting the provisional arrangement with regard to the westerly and northerly boundaries of Ontario, I am now directed to transmit herewith a copy of an Order in Council, approved of by His Honour the Lieutenant-Governor the 9th instant, together with a copy of the Report of the Honourable the Attorney-General therein referred to, having reference to such boundaries.

I have the honour to be, Sir,
Your obedient servant,

I. R. Eckart,
Assistant Secretary.

Hon. Secretary of State, Ottawa.

---

* Ho. of Coms. Return, 19th March, 1881, No. 37, p. 24.

THE UNDER-SECRETARY OF STATE TO THE MINISTER OF THE INTERIOR.*

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 13th May, 1878.

SIR,—Adverting to the Order of His Excellency the Governor-General in Council of the 29th ult., I am directed to transmit to you herewith a copy of a letter from the Assistant Provincial Secretary of Ontario, and of the Minute of Council and Report of the Honourable the Attorney-General of that Province therein referred to, with respect to the provisional arrangement regarding the westerly and northerly boundaries of Ontario.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

Hon. Minister of Interior.

MEMORANDUM OF THE DEPUTY-MINISTER OF JUSTICE.*

OTTAWA, 27th May, 1878.

On the 9th June, 1857, H. Merivale, Esq., by letter of that date, submitted to the then Attorney and Solicitor-General, as law officers of the Crown, certain questions connected with the rights of the Hudson's Bay Company, and requested their opinion thereon.

In this letter Mr. Merivale states that the statements of Hudson's Bay Company rights as to territory, trade, etc., made by them to Earl Grey, on the 13th September, 1849, was submitted to the then law officers of the Crown, who reported that they were of opinion that the rights so claimed by the Company properly belonged to them.

It is of great importance, for the purpose of the arbitration shortly to be held, to settle the north-west boundary of Ontario, that a copy of the statement submitted by the Hudson's Bay Company to the Government as above mentioned, and of the opinion of the law officers of the Crown thereon should be obtained.

Will the Secretary of State please request His Excellency to communicate without delay with the Colonial Secretary, and request that a copy of the documents referred to may be obtained and transmitted at as early a date as possible.

The arbitration is expected to be held in July next.

Z. A. LASH,
Deputy of the Minister of Justice.

THE UNDER-SECRETARY OF STATE TO THE GOVERNOR-GENERAL'S SECRETARY.†

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 29th May, 1878.

SIR,—I am directed to transmit to you herewith, for the information of His Excellency the Governor-General, a copy of a memorandum from the Deputy of the Minister of Justice, requesting that copies may be procured of certain documents therein mentioned, in reference to the rights of the Hudson's Bay Company as to territory, trade, etc.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

The Governor-General's Secretary.

---

* Ho. of Coms. Return, 19th March, 1881, No. 37, p. 25. † *Ibid.*, p. 26.

ORDER IN COUNCIL, APPROVED BY THE LIEUTENANT-GOVERNOR THE 31ST DAY OF JULY, 1878.*

Upon consideration of the Report of the Honourable the Attorney-General, dated 30th day of July, 1878, recommending that the Honourable Robert A. Harrison, Chief Justice of Ontario, be appointed arbitrator in the matter of the northerly and westerly boundaries of the Province of Ontario in relation to the rest of the Dominion, in the room and stead of the Honourable William Buell Richards, who, since his appointment as such arbitrator, was appointed Chief Justice of the Supreme Court, and subsequently resigned his appointment as arbitrator, the Government of the Dominion having named Sir Francis Hincks one of the arbitrators in the room and stead of the Honourable Lemuel Allan Wilmot, deceased, and the Right Honourable Sir Edward Thornton having been named on behalf of the Governments of the Dominion and Ontario; and also recommending that the determination of the award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as final and conclusive; and also that the Province of Ontario agree to concurrent action with the Government of the Dominion in obtaining such legislation as might be necessary for giving effect to the conclusion arrived at by the said arbitrators, and for establishing the northern and western limits of the Province of Ontario in connection therewith:

The Committee of Council advise that the foregoing recommendations be adopted and approved of by your Honour.

Certified.

LONSDALE CAPREOL,
Assistant Clerk, Executive Council, Ontario.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, APPROVED BY THE GOVERNOR-GENERAL ON THE 31ST JULY, 1878.*

The Committee of Council have had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the present Chief Justice, the Honourable R. A. Harrison, and the Honourable Sir Francis Hincks, who has been named on behalf of the Dominion; and whereas subsequently to the action taken under Order of Council of 12th November, 1874, it was mutually agreed between the Governments of the Dominion and Ontario, that the Right Honourable Sir Edward Thornton should be selected as third referee, the Committee recommend that such selection be confirmed by Minute of Council, and that the determination of such three referees be final and conclusive upon the limits to be taken as and for each boundary respectively.

Certified.

W. A. HIMSWOTH,
Clerk Privy Council, Canada.

---

* Sess. Papers, Ont., 1879, Vol. 11, No. 42.

A STATEMENT OF THE CASE OF THE PROVINCE OF ONTARIO RESPECTING THE WESTERLY AND NORTHERLY BOUNDARIES OF THE PROVINCE.

PREPARED FOR THE ARBITRATION BETWEEN THE DOMINION AND THE PROVINCE, 1878, BY THE ATTORNEY-GENERAL OF ONTARIO.*

Ontario has the same limits as Upper Canada had; and the same limits as, west of the division line between Upper and Lower Canada, the Province of Canada had, and the Dominion of Canada had before its purchase of the rights of the Hudson's Bay Company.

In the present dispute the claim of Ontario is to the boundaries which were officially insisted upon by the Province of Canada before Confederation, and by the Dominion afterwards. It is submitted that the demand so made was just and well-founded.

Thus, the Hon. Mr. Cauchon, Commissioner of Crown Lands, in an Official Paper, in the year 1857, claimed that the westerly boundary of the Province extended "as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi which [a due west line from the Lake of the Woods] intersected, which would be the White Earth River; and this [he showed] would in fact correspond with the extent of Canada previously known to the French. . . . The southerly boundary of the British dominions, west of Lake Superior, being therefore demonstrated as identical with the southerly boundary of Canada, to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found. Is it the White Earth River, the first waters of the Mississippi which the due west line intersects? or is it the summit of the Rocky Mountains, on the same principle that the *co-terminous* boundary of Louisiana was ultimately so construed?"

With respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction."

So also, after Confederation, in an official letter of the Canadian Ministers, Sir George E. Cartier and the Honourable William McDougall, to Sir Frederic Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, they pointed out that "the boundaries of Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include 'all the territory to the westward and southward' of the 'boundary line of Hudson's Bay . . . . to the utmost extent of the country commonly called or known by the name of Canada.' Whatever doubt may exist as to the 'utmost extent' of Old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between Lake of the Woods and Red River. The Government of Canada therefore does not admit, but on the contrary denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters in the territory" between the Lake of the Woods and Red River (that being the territory to which the matter which called forth the letter referred).

In another letter, dated 8th February, 1869, also addressed to Sir Frederic Rogers, the same Ministers mentioned among other facts and inferences "which cannot, [they] believe, be disputed," the following:—

"1. The Charter of Charles II. (and for the present we raise no question as to its validity) could not, and did not, grant to the Hudson's Bay Company any territory in America which was not then (1670) subject to the Crown of England.

"2. The Charter expressly excluded all lands, etc., then 'possessed by the subjects of any other Christian Prince or State.'

"3. By the Treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France the sovereignty of Acadia, New France, and Canada generally, and without limits.

* Sess. Papers, Ont., 1879, No. 13.

"4. 'La Nouvelle France' was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove.

"5. At the Treaty of Ryswick (1697), twenty-seven years after the date of the Charter, the right of the French to 'places situated in the Hudson's Bay' was distinctly admitted; and although commissioners were appointed (but never came to an agreement) to 'examine and determine the pretensions which either of the said Kings hath to the places situate in the Hudson's Bay,' and with 'authority for settling the limits and confines of the lands to be restored on either side;' the places taken from the English (*i.e.*, from the Hudson's Bay Company), by the French previous to the war, and 'retaken by the English during this war, shall be left to the French by virtue of the foregoing [the 7th] Article.' In other words, the forts and factories of the Hudson's Bay Company, established in Hudson's Bay under pretence of their Charter, and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored, by the Treaty of Ryswick, to the French, and not to the Company.

"6. By the Treaty of Utrecht, 1713, 'the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto,' were finally ceded to Great Britain.

"7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson's Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

"8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt,' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

"9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their Charter. The license to trade in the Indian territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

"10. The country which, in view of these facts, must be excluded from the operation of the Charter, includes all the lands fit for cultivation and settlement in that part of British America."

Ontario claims that the official views of the Government of the Dominion, as thus expressed, should, *prima facie*, be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded. The onus of proof is on the Dominion.

The opinion of Chief Justice Draper, as communicated to the Government of the Province of Canada, 12th June, 1857, was that the decision of the Privy Council would give "to Canada a clear right west to the line of the Mississippi and some considerable distance north of what the Hudson's Bay Company claim;" though not any territory "west of the westernmost head of the Mississippi River."

But the claim of the Dominion as made in 1872, after having acquired the Company's right, and as made now, proposes to limit the Province on the west to the meridian of the confluence of the Ohio and Mississippi, variously stated as 88° 50′, 88° 58′, and 89° 9′ 27″; and to limit the Province on the north (as the Company claimed in 1857) by the height of land which divides the waters that fall into Hudson's Bay from those that fall into the St. Lawrence and its lakes.

In support of the claim which Ontario represents, the Province relies on the arguments of the Ministers of the Province of Canada before Confederation, the arguments of the Ministers of the Dominion, the legal opinion of the learned Chief Justice, and the arguments set forth in Mr. Mills' Report, and in the other papers, on the same side, which have been collected and printed for the purpose of the present arbitration. The evidence obtained during the present year affords some fresh arguments in favour of the same views.

The present statement is a summary of some only of the facts and reasons which support Ontario's claim.

In 1763, France ceded to England Canada with all "its dependencies," reserving so much of what had theretofore been known as Canada as lay west of the Mississippi River; and the Treaty provided that the confines between "France and England in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source . . . to the sea."

Shortly after the Treaty, His Majesty, by Royal Proclamation dated the 7th October, 1763, erected the Province of Quebec, with certain boundaries therein set forth. Afterwards, in 1774, the Quebec Act was passed, which recited that "by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided, "that all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by" a line, therein described, from the Bay of Chaleurs to "the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay, . . . be and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th October, 1763."

Ontario contends that a true construction of this language requires that the line northerly from the confluence of the Ohio and Mississippi should follow the Mississippi River to its source.

That this is not only the just construction of the language employed, but was also the real intention of Parliament, is shown further by the history and the known objects of the Bill, by the proceedings thereon in the House of Commons, and by the letter of the Right Honourable Edmund Burke, dated 2nd August, 1774, to his constituents of the Province of New York, whose agent he was at the time.

So, the Royal Commission which was issued immediately afterwards (viz., 27th December, 1774) to Sir Guy Carleton, as Captain-General and Governor-in-Chief of the Province, expressly describes the line from the confluence of the Ohio and Mississippi as "northward *along the eastern bank* of the said river [Mississippi] to the southern boundary of the territory granted to the" Hudson's Bay Company.

Sir Frederick Haldimand succeeded Sir Guy Carleton. His Commission is dated 18th September, 1777, and assigned to the Province the same boundary lines as the previous Commission had done.

These two Commissioners remove all reasonable doubt as to the line northward being along the banks of the Mississippi to its source on two grounds :—

(1.) On the ground that these Commissions show the contemporaneous exposition of the intention of the Act, by the Ministers of the day and by their distinguished law advisers. Lord Camden was Lord Chancellor ; Mr. Thurlow was Attorney-General, and Mr. Wedderburn was Solicitor-General—each of whom afterwards became Lord Chancellor.

(2.) On the ground that the Crown had an undoubted right to add to the boundaries of the Province ; and that if the boundaries given to it by the Commissions are not the identical boundaries which the Statute provided for, and which were thereby to continue during His Majesty's pleasure, and if the Commissions assigned to the Province a larger area than the Statute had described, the Crown had the right to make and did make the addition.

By the Treaty of Paris between Great Britain and the United States, in 1783, it was agreed that the boundary between the two countries should be a line, therein particularly described, from the north-western angle of Nova Scotia, through Lakes Ontario, Erie, Huron, Superior, Long Lake, etc., to the Lake of the Woods, "thence through the said Lake [of the Woods] to the most north-western point thereof, and from thence on a due west course to the River Mississippi," etc.

The Commission to Sir Guy Carleton after this Treaty (dated 22nd April, 1786),

followed this description in giving the boundaries of the Province, and assigned as its southerly boundary a line "to the said Lake of the Woods, thence through the said Lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the" Hudson's Bay Company.

A due west line from the point indicated would not intersect what is now known as the Mississippi, and therefore what was then known as the Mississippi, or the first tributary so intersected, the waters of which flow into the Mississippi, may be taken as intended. This question is very fully discussed in Mr. Dawson's paper. If that view should not be sustained, the alternative is the course taken under the Treaties with the United States of 1794, 1814, 1818 and 1842.

The Constitutional Act, 1791, the Act providing for the division of the Province of Quebec, recited that "His Majesty had been pleased to signify, by his message to both Houses of Parliament, his Royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada;" and the Act made provision for the government of each Province after the division should take place. A Paper had been presented to Parliament previous to the passing of this Act, describing the line proposed to be drawn for dividing the Province of Quebec into two Provinces. This Paper traced the line of division into Lake Temiscaming, "and from the head of the said Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

On the 24th August, 1791, an Order in Council was passed, reciting among other things that this Paper had been presented to Parliament previous to the passing of the Act; and dividing the Province into two, according to the line of division mentioned in the paper.

On 18th November, 1791, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a Proclamation, in His Majesty's name, in pursuance of his instruction and of a provision for this purpose in the Statute, declaring when the division should take effect (26th December, 1791). This Proclamation recited as follows:—

"Whereas we have thought fit, by and with the advice of our Privy Council, by our Order in Council dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—'To commence at a stone boundary, [etc.,] running north twenty-five degrees east until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.'"

That the country then commonly called or known by the name of Canada comprised the whole of the territory formerly claimed against the Hudson's Bay Company, and now claimed by Ontario, is established by abundant testimony.

On the 12th September, 1791, a Commission issued to Lord Dorchester, this being the second Commission issued after the Treaty of 1783. It recited the Commission of 22nd April, 1786, to the Governor-General (as Sir Guy Carleton), the Order in Council of 19th August, 1791, dividing "said Province of Quebec" into separate Provinces, by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shows that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada; for it is not to be supposed that there was an intention so soon to give to the Province narrower bounds than were indicated by the Paper presented to Parliament, adopted afterwards by the King in Council, and declared by the Proclamation of Governor Clarke. The change of expression was probably suggested by taking note of the language

of the Treaty of 1763, by which, while France ceded to England "Canada and all its dependencies," the cession was subject to a limitation. The watershed of the Mississippi and Missouri had been the boundary line between Canada and Louisiana, and that part of Canada which was west of the Mississippi was reserved to France. So, by the Treaty of 1783, a further part of Canada was ceded by England to the United States. A description, therefore, in 1791, of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada" would not have been correct. A form of expression was therefore substituted which was free from this difficulty.

The subsequent Commissions to the Governors-General of Canada, up to and including that of Lord Gosford in 1835, and the Imperial Commission to Mr. Caldwell as Receiver-General of Lower Canada, assigned the same line of division between Upper and Lower Canada.

In the seven subsequent Commissions, from the Commission to the Earl of Durham, 30th March, 1838, to the Commission to Lord Elgin, 1st October, 1846, inclusive, and also in the two Commissions to Sir John Colborne and the Right Honourable Charles Poulett Thomson, as Captains-General and Governors-in-Chief of Upper Canada, dated the 13th December, 1838, and 6th September, 1839, respectively, the line of division between Upper and Lower Canada is stated to reach the shore of Hudson's Bay "by a line drawn due north from the head of said lake [Temiscaming], until it strikes the shore of Hudson's Bay." The expression "shore of Hudson's Bay" obviously has the same signification as "boundary line of Hudson's Bay," but if the latter expression could be supposed to refer to some line south of the shore, the subsequent Commissions must be taken as having extended the boundary to the shore. These two Commissions trace the western boundary into Lake Superior, and no further, saying nothing of the line thence westerly or northerly; but of course nobody has ever supposed that the southerly boundary of the Province terminated as soon as Lake Superior was reached.

[The Commissions subsequent to Lord Elgin's contain no boundary line descriptions. The other Commissions to the Lieutenant-Governors of Upper Canada which have been examined, either do not give the boundaries of Upper Canada, or give them partially only, and in such a manner as throws no light on the present question. So also the Commissions after the union do not give the western boundary of the Province of Canada. The Act of Union, 1840, does not specify the boundaries of the Province of Canada thereby created, but describes the new Province of Canada as constituted of the former Provinces of Upper and Lower Canada.]

Now the Province of Upper Canada, from a period long antecedent to its union with Lower Canada, and the Province of Canada afterwards, acted, whenever there was occasion, on the assumption that the boundaries of the Province were those assigned by the Royal Commissions. Thus:

(1.) The Province of Upper Canada is known to have been in the habit, since, at all events, 1818, of issuing writs into the territory west of the line of 89° 9½'.

(2.) In 1850, the Province of Canada, with the sanction of the Imperial authorities, entered into a treaty with the Indians, and procured from them the surrender of the rights of the Indians in the territory as far west as Pigeon River. This territory, it may be observed, is south of the height of land, and was never claimed by the Hudson's Bay Company, though it is now claimed on behalf of the Dominion.

(3.) From the year 1853, the Province of Canada, continuously, and without objection from any quarter, made grants of lands, in the Queen's name, in this territory, and west of the proposed line of the Dominion. Between 1853 and Confederation, no less a quantity than 35,059 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extending to Pigeon River.

(4.) In 1868 the Government of the Dominion appropriated $20,000 towards the construction of a road from the Lake of the Woods to Fort Garry, on Red River; and the money was spent accordingly.

So far as relates to Ontario's western boundary, it is unnecessary to consider for the present purpose the argument as to the Hudson's Bay Company owning this territory;

because the extension of the southerly boundary to the west is not, either by the Statute, or by the subsequent acts of the Crown, made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us; and the Crown of course had the power to include part of the territory of the Company, if such was the Royal will. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the Treaty of Cession, adds strength to Ontario's claim, even in respect of the western boundary.

The decisions of a Lower Canadian Court, in 1818, in the cases of DeReinhard and and McLellan, have been cited in favour of the line drawn due north from the confluence of the Ohio and Mississippi, and stated in the evidence in that case to be 88° 50′ or 88° 58′. The principal evidence, however, on which a different conclusion is based, was not before the Court, or referred to, in those cases; and it is said also that the prisoner De Reinhard was pardoned (though clearly guilty of murder), and that the reason of his pardon was, that (notwithstanding the supposed decision of the Court to the contrary) the place of committing the murder was within Upper Canada, and, therefore, not within the jurisdiction of the Court under the Statute 43 Geo. III., c. 138, on the authority of which the Court was acting.*

In view of all these considerations, it is apparent that if there is any difficulty, on the westerly side of the Province, it is as respects the territory west of Lake of the Woods. Is the western line further west than this Lake? Is the point of commencement the point on the first tributary of the Mississippi which a line due west from the most north-western point of the Lake of the Woods strikes? Or does the western limit extend to the Rocky Mountains?

Then as to the Northern boundary:

It has been already stated that the Quebec Act, and such of the Royal Commissions to the Governors, previous to 1838, as mention the Northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson's Bay Company; and the principal difficulty here is, that the southerly boundary of this territory has always been an unascertained line.

The claim of the Dominion is that the boundary is the Height of Land already described. It is submitted, for the following among other reasons, that the Height of Land is not our northern boundary:

(1.) Because the easterly and westerly lines assigned to the Province by the Royal Commissions, cut through and go north of the Height of Land; and the Commission issued in 1791, and such of the subsequent Commissions as mention the northerly boundary, thereby declared in effect that the southerly boundary of the Company's territory was not south of those points, viz.: the south shore of Hudson's Bay (there called James' Bay), and the most north-western point of the Lake of the Woods; and was north of the Height of Land.

(2.) Because the Height of Land was not claimed or suggested by the Company as being the intention of the Charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of the Charter. This fact is a practical contemporaneous exposition of the Statute by the Company themselves against their recent claim, and, having been continued for 150 years, is, without other evidence, conclusive.

* [Notwithstanding this decision, an opposite view appears to have been taken by the Upper Canada judges. (See paper by Chief Justice Powell, dated 1st May, 1819, in "Papers relating to the Red River Settlement, 1815–1819," being a Return made to the British House of Commons, printed in its Sessional Papers of 1819, vol. 18, p. 285.) His Lordship considered Upper Canada, as he said, "to comprehend all the country conquered from France under the name of Canada, which had not been relinquished to the United States of America, or secured to the Hudson's Bay Company, or designated as Lower Canada."

It may be added, that in the papers embraced in the same Return, Fort William (which lies west of the due north line) and the surrounding section are treated throughout as being within the Western District of Upper Canada. The Governor-General so refers to it in his letters, pp. 57, 94. The Hon. John Beverley Robinson, then Attorney-General of Upper Canada, treats it in the same way, pp. 281, 284.

It also appears from the same Return that the Deputy Sheriff of the Western District, as such, attempted to arrest Lord Selkirk at Fort William, and failing in the attempt, endeavoured afterwards to execute his warrant still further west, viz., at the Red River Settlement.—G. E. L.]

(3.) Because the alleged rule, that the discovery and possession of the shore of a new country give a right to the rivers and the land adjoining the same, if a recognized rule now, was not such at the time of this Charter being granted, and ought not to govern its interpretation. The rule is said to be founded on reason and necessity ; but there is no just reason or necessity for applying such a rule in the case of a river nearly 3,000 miles long.

(4.) Because the French, from the beginning of the seventeenth century, were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson's Bay, and were extending their explorations and settlements to the head waters of the rivers flowing into Hudson's Bay, and to the interior of the country. There is no sound reason to sustain a rule for giving to the discoverers of the Bay into which these rivers flow, a right to stop such explorations and settlements, in favour of discoverers (if the English were such) who did not choose to occupy the interior of the country. The rule as to rights to unoccupied contiguous territory is in such case more than sufficient to outweigh the supposed rule as to the Height of Land.

(5.) Because the ground of the recent claim is that the English were the first discoverers, and that their discoveries were followed by such possession of the territory in question as the laws of nations recognize as giving a title to the territory up to the Height of Land ; while the fact is, that it is impossible to say with certainty who were the first discoverers, nor was the alleged discovery by the English followed by possession. The voyage of Cabot, when he entered the Bay, is said to have been in 1517 ; and no sort of possession of any part of the Bay by the English before 1667 is pretended ; being an interval of 150 years. Gilham is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the Bay. In the meantime the Bay had become known to the world ; persons acting under the authority of the French Government had repeatedly visited it ; had taken possession in the French King's name, and set up the Royal Arms there ; the French had established posts at convenient points for trade with the Indians, and had secured and were enjoying the whole trade with the Indians around the Bay. In 1627, the King gave to the Company of New France the right of trade to an extensive territory—including Hudson's Bay—both along the coasts and into the interior. Under such circumstances, the rule invoked by the Dominion has no application.

What then is to be regarded as the southerly boundary of the territory of the Company ?

The language of the Charter, by reason of its ambiguity, affords no assistance in this enquiry. The validity of the Charter has always been questioned on the ground of its ambiguity, as well as for other reasons. Some legal opinions have indeed been given in favour of the validity of the Charter as respects the whole territory to the Height of Land claimed in recent times by the Company ; but these opinions were based upon the Company's statement that they had "always claimed and exercised dominion, as absolute proprietors of the soil, in the territory understood to be embraced by the terms of the grant."

(1.) Assuming, however, that the northern boundary is, on one side, the shore of Hudson's Bay, say between 51° and 52° of latitude, and on the other at least as far north as the most north-western point of the Lake of the Woods, say latitude 49° 23′ 55″ ; if these points were in the Hudson's Bay territory, the northern boundary would be a line drawn from one of these points to the other. We claim that our boundary is farther north than this, but it cannot be south of it.

Are these points in what was the territory of the Company ? And is the Provincial boundary therefore no further north ?

(2.) If by reason of the Charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void, it must, as regards its construction and operation, on well-known and well-settled principles, be interpreted most strongly against the Company, and in favour of the Crown. The object of giving the Charter was to encourage discoveries by the Company ; and the validity or operation of the instrument is to the extent only of giving to the Company whatever of the unknown territory the Company, within a moderate and reasonable time, should occupy ; and all

that the Company could be entitled to was what the Company had, in this manner, acquired for themselves and for the Crown, previous to the cession of Canada in 1763 by France to England; or whatever, previous to that time, the Company had been in possession or enjoyment of as their own with the concurrence of the Crown.

(3.) The Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; for it is preposterous to suppose that the Charter intended to grant, and did effectually grant, to the Company, as against the world, all the territory southerly and westerly of the Bay to the then unknown Height of Land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the Charter was intended to give, and did give, to the Company, the right to shut up this enormous territory from the Crown and from all British subjects—and from other nations also—for all time; that if the Company should do nothing to discover, settle or acquire it for a hundred years or more, nobody else could; and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by employment of the resources of the whole Empire, in Europe as well as America,—accrued, when so acquired, and was intended to accrue, to the Company, for their own private benefit.

(4.) It is clear, and indeed has been repeatedly admitted by the Company themselves, that until long after the date of the cession the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant.

(5.) On the other hand, the Dominion Ministers truly affirmed in 1869, that "the evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg until many years after the cession of Canada to England." In fact, the Company's first post—viz., Cumberland House, on Sturgeon Lake—in the vicinity of the region in question was not built until 1774, and they did not establish any post within this tract of country before 1790.

(6.) The following facts (amongst others) were judicially found by Judge Monk, in Connolly *vs.* Woolrich, with respect to the proceedings of the French, before the Hudson's Bay Company's Charter was granted. He showed that as early as 1605 Quebec had been established, and had become an important settlement; that before 1630 the Beaver and several other companies had been organized at Quebec for carrying on the fur trade in the west, near and around the Great Lakes and in the North-West Territory; that the enterprise and trading operations of these French companies, and of the French colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended their hunting and trading operations to the Athabasca country (say 58° north latitude and 111° west longitude); that some portions of the Athabasca country had before 1640 been visited and traded in, and to some extent occupied by the French traders in Canada and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements had considerably increased in number and importance; that Athabasca and other regions bordering upon it belonged to the Crown of France at that time, to the same extent and by the same means as the countries around Hudson's Bay belonged to England, viz., by discovery, and by trading and hunting.

(7.) It may be added, that if the Athabasca country thus belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson's Bay on the west, and between the Athabasca country and the St. Lawrence on the south.

(8.) Between 1670 (the last date named by Judge Monk) and 1763 the French established posts or forts in that North-West Territory which they had previously

explored, and hunted over and traded with; namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River aux Biches, and the Saskatchewan, and so west to the Rocky Mountains, where Fort La Jonquière was established by St. Pierre in 1752. All the lakes and rivers mentioned are connected by the Nelson River with Hudson's Bay, and are in the territory which, in the following century, the Hudson's Bay Company claimed under their Charter; but confessedly they had constructed in it no post or settlement of any kind until long after 1763—their first post away from the Bay (other than the two factories already mentioned), having been established in 1774. It was not until 1790 that they had any post in the Winnipeg Basin; and they did not enter the valley of the Red River until long afterwards.

(9.) France had also, on the northerly side of the dividing line, Fort Abbitibi, which was north of the Height of Land, and was built in 1686. It was situate at a considerable distance north of the Height of Land, and upon the lake of the same name, from which the River Monsippy flows into Hudson's Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up on the same river Fort La Maune, established about the same period; and, to the east, Fort Nemiscau, on the lake of that name, situate on the River Rupert, midway between Lake Mistassin and the Bay; this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another fort on the Albany, being that mentioned in one of the memorials of the Company as having been built in 1715.

(10.) The Company furnished certain maps for the purpose of the present arbitration, two of which only seem of importance on either side. One of these two bears the Royal Arms and those of the Company, is of the date of 1748, and seems to have been prepared by the Company in view of the Parliamentary enquiry of that year, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the Height of Land, even as shown on this map; for the line is therein made to cut Frenchman's River—a river not named on this map, but corresponding with the Abbitibi River—and several other rivers shown on the map as flowing into the Hudson's Bay. The line runs to Lake Winnipeg (which is misplaced, being represented as due north of Nepigon, its southern point in the latitude of Fort Nelson), thence northerly along the easterly shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound in Baffin's Bay. The map thus demonstrates that the Company, at the time of its preparation, did not claim to the Height of Land, even as the same was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the author, February, 1755. This copy appears to have been much used and worn. There is on it an irregular line marked "Bounds of Hudson's Bay by the Treaty of Utrecht;" and this line may therefore be taken as showing the extent of the Company's claim in 1755, and long after. The line is about one-third of a degree north of the Lake of the Woods, and extends to the limit of the map in that direction, being about 98° of longitude. The territory south of this line is differently coloured from the territory north of it.

It is evident that the Company have in their possession no maps which purport to give to them a larger territory than these maps do. Their claim to the height of land as the true intention of the Charter, and the true measure of their rights, so far from having been always made, was not thought of by the Company until more than half a century later, and was in effect negatived by the Crown in numerous Commissions to the Governors of the country.

The maps produced show the extent of territory which the Company claimed prior to the cession of 1763.

It may be observed that on the occasions of the Treaties of Ryswick and Utrecht, the Company's claims were expressed either in the terms of the Charter, or were simply to "the whole Bay and Straits of Hudson, and to the sole trade thereof." It sufficiently appears, from the early documents which emanated from the Company, that this general claim to the whole Bay and Straits was a claim to the waters and shores only, and to the exclusion of the French therefrom—the French having been in pos-

session of forts on the Bay until after the Treaty of Utrecht, and the Treaty of Ryswick having in effect given them possession of all places on the Bay, except, it may be, Fort Bourbon ; and that the Company's object was the trade of the Bay, and not the occupation or settlement of the country away from the shores of the Bay.

Indeed, in 1700, the Company, notwithstanding this claim, were willing to accept the Albany River as their southern boundary on the west side, and Rupert River as their southern boundary on the east side of the Bay. In 1701-2 they were content even with East Main River, and proposed it as a boundary. But both proposals were rejected by the French as being far more than the Company had any right to demand.

In 1711-12 the Company proposed a line to run from the Island of Grimington, or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the lake ; and though the Company made a demand for the surrender of the forts on the shores of the Bay, yet they do not appear to have made at that time any proposal as to a line on the west or south side of the Bay.

Thus the only claims and contests of the Company at this period were about the margin of the Bay.

After the Treaty of Utrecht (1713), which gave to the British all lands, etc., "on the Bay and Straits, and which belong thereto," the Company, on the 4th August, 1714, proposed, for the first time, that the Mistassin line should go south-westerly to 49° "north latitude, . . . and that that latitude be the limit;" but as to how far to the west this line of 49° was to be followed nothing is said.

In 1719 and 1750 the Company proposed the line of 49°, but both times the proposition was rejected by the French. This line would have given to the Company a boundary greatly more limited than the boundary of the Height of Land, which began to be claimed three-quarters of a century later.

It has already been said that the Company could not take advantage of their Charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763 ; but the practical result would be nearly the same if this right should be deemed to have ceased at a somewhat later date, viz., the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783. The Company made no further settlement between 1763 and 1783, except Cumberland House ; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill system. Both the Act and the Treaty obviously require that the southern boundary should be deemed a fixed line, not liable to variation by the mere act of the Company.

These considerations are submitted as showing that the strict legal rights of the Company did not extend beyond their forts on the shores or in the neighbourhood of the Bay, and such adjacent territory as these forts may have commanded ; and that Ontario is entitled to have its northerly boundary line drawn accordingly.

Or, if the Company's territory is to be considered as extending beyond the forts on the Bay and the immediately adjacent territory, their territory is not to be deemed south of the northern extremity of the dividing line between Upper and Lower Canada ; or to exceed otherwise what England herself was entitled to under the Treaty of Utrecht, viz., the middle line between the forts and settlements of the English and French ; and further, is not to include a greater area than is shown on the maps furnished by the Company, in case the middle line would give them a larger territory than these maps claimed for the Company ; for the reference in the Statute of 1774 to the territory granted to the Hudson's Bay Company, cannot in any view be construed as referring to a more southerly line than the Company had theretofore claimed for themselves.

Or, if there is too much doubt as to the southern boundary of the Company's Territory to determine with precision where such boundary was, a northern boundary should be assigned to the Province which would give to the Province the full territory which the Commissions to the Governors definitely provided for, and, in addition, such further territory to the north as may be just and reasonable.

O. Mowat,
Attorney-General of Ontario.

STATEMENT OF THE CASE OF THE GOVERNMENT OF THE DOMINION OF CANADA REGARDING THE BOUNDARIES OF THE PROVINCE OF ONTARIO.

Prepared by Hugh MacMahon, Q.C., Counsel for the Dominion.*

ABBREVIATIONS.

"Ont. Docts."—Statutes, Documents and Papers respecting the northern and western boundaries of Ontario, compiled by direction of the Government of Ontario.

"Mills."—Revised Report for the purpose of the arbitration between the Dominion of Canada and Province of Ontario, by David Mills, Esq., M.P.

"Papers Relating to H. B. Co. Presented to House of Commons."—Papers presented by command of Her Majesty to the House of Commons, in pursuance of an address respecting the territory, trade, taxation and government claimed or exercised by the Hudson's Bay Company. (Ordered by House of Commons to be printed, 12th July, 1850.)

The limits assigned to the Province of Ontario by the British North America Act, 1867, sec. 6, are such part of the Province of Canada as at the passage of the Act formerly constituted the Province of Upper Canada.

The claim of the Dominion of Canada is, that the meridianal line drawn due north from the junction of the Ohio and Mississippi Rivers (ascertained to be 89° 9′ 27″ west) forms the western boundary of Ontario, and that the land's height of the northern water-shed of the St. Lawrence is the northern boundary.

The Government of Ontario contend that the western limit of that Province is the Rocky Mountains; that the north-western limitary line lies north of the Saskatchewan; and that the north-eastern line lies in the vicinity of Hudson's Bay. (Mills, p. 1.)

The claim of Ontario to extend the western limit of the Province to the Rocky Mountains rests, it is assumed, upon the supposed title of France to that country, as having been the first discoverers thereof. It was stated by M. de Callières, when writing to M. de Seignelay in 1685 (N. Y. His. Doc., Vol. IX., p. 265), that the French were the first to discover Hudson's Bay, and that nation was therefore entitled to the whole country to the base of the Rocky Mountains; and the rule of international law on which this is claimed is thus stated by M. de Callières: "It is a custom established and a right recognized by all Christian nations, that the first who discovers an unknown country, not inhabited by Europeans, and who plant in it the arms of their prince, secure the property thereof to that prince in whose name they have taken possession of it."

L'Escarbot, in 1617, stated that "New France has for its limits on the western side the lands as far as the sea called the Pacific; on this side the Tropic of Cancer; on the south the islands of the Atlantic Sea, in the direction of Cuba and the island of Hespaniola; on the east by the Northern Sea, which bathes New France; and on the north that land called 'Unknown,' towards the icy sea as far as the Arctic Pole." (Ont. Docts., p. 53.) So that the whole of the north-western portion of the continent was claimed as belonging to France.

It will be necessary briefly to show upon what these claims are founded, and then to consider if they have any value as bearing on the question to be decided by the arbitrators.

In 1626, Louis XIII. granted to the Company of New France a charter which, it is asserted, included the whole of the country about Hudson's Bay and west of it.

The Indians from the vicinity of Hudson's Bay came to Montreal to trade; hence it is said there was no necessity for erecting forts and trading-posts. (Mills, p. 127.)

It is stated that Jean Bourdon, the Attorney-General, in 1656, explored the entire coast of Labrador and entered Hudson's Bay.

* London, Ont., 1878; Report of Committee Ho. of Com., Can., 1880, pp. 237-255.

It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a *discovery* thereof.

There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council.* There is a record, however, of his having made the attempt in the year following (1657), and he may then have designed carrying out the order.† He sailed on the 2nd day of May, and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. (Journal des Jesuites, pp. 209-218.) As to the extent of this voyage there can be no doubt, as in the Rel. des Jesuites, Vol. III., Rel. 1658, p. 9, it is thus reported:—

"Le 11 (Août) parut la barque de Monsieur Bourdon lequel estant descendu sur le grand fleuve du Costé du Nord voyagea jusques ou 55 degré au il rencontra un grand banc de glace qui le fit remonter, aiant perdu deux Hurons qu'il avait pris pour guides. Les Esquimaux sauvages du Nord les massacrèrent et blessèrent un François de trois coups de flèches et d'un coup de couteau."

The Jesuits would have known if Jean Bourdon had entered the Straits of Hudson, and would have mentioned it in their Relations. On the contrary, they never mention it, and it is to be taken from that that the assertion that he ever entered Hudson's Bay is a myth, because he was of the Province of Quebec, and was a man well known and trusted by the Jesuits, and went with Father Jogues on an embassy to Governor Dongan, of New York.

It is asserted that Father Dablon and Sieur de Valliere were in 1661 ordered by Sieur d'Argenson, Governor of Canada, to proceed to the country about Hudson's Bay, and they went thither accordingly, and the Indians who then came back with them to Quebec declared that they had never seen any Europeans there before.

In Shea's Charlevoix, Vol. III., pp. 39 and 40, it is stated that he (Father Dablon) *attempted* to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John.‡ They could not proceed any further, being warned by the approach of the Iroquois.

Rev. Claude Dablon arrived in Canada in 1655, and was immediately sent missionary to Onondaga, where he continued, with a brief interval, until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded in reaching only the head waters of the Nekauba, 300 miles from Lake St. John. (N. Y. His. Doc., Vol. IX., p. 97, note 2.—*Ed.*)

In the Rel. de Jesuites, Vol. III. (1661), p. 13, there is an account of this voyage, which is called "*Journal du premier voyage fait vers la mer du Nord.* (12 Août, 1661.)" The account is dated from the highest point they reached, Nekauba, 100 lieues de Tadousac, 2 Juillet, 1661:—

"1661, Juillet le 27, retournèrent ceux qui estoient allés ou pretendoient aller à la mer du Nord au Kiristinons P. Dablon, etc." (Journal du Jesuites, p. 300.)

An assertion is made that some Indians came from about Hudson's Bay to Quebec in 1663, and that Sieur la Couture with five men proceeded overland to the Bay, possession whereof they took in the King's name.

---

*[The same authority quoted by Mr. MacMahon informs us that "as regards Hudson's Bay, the French settled there in 1656," and that the Sieur Bourdon "went to the north of the said Bay, and took possession thereof in His Majesty's name." (The Sieur de Callières, Governor of Montreal, and subsequently Governor-General of Canada, to the French Minister, the Marquis de Seignelay, in Book Arb. Docs. p. 109.) And there is the further statement that "in 1656, Jean Bourdon ran along the entire coast of Labrador with a vessel of thirty tons, entered and took possession of the North Bay. This is proved by an extract of the ancient Register of the Council of New France of the 26th of August of said year." (The Marquis de Denonville, Governor-General of Canada, to the Marquis de Seignelay, Book Arb. Docs. p. 111.) The North Bay—*Baie du Nord*—a French name for Hudson's Bay. By the term "north of the said Bay," is meant the northern part—probably Port Nelson.—G. E. L.]

†[The contention on the part of Ontario is that this is the private record of a different voyage in a different year, and which, either because of its not having been directed to Hudson's Bay, or in consequence of its failure if it was so directed, is not noticed in the official records or despatches.—G.E.L.]

‡[Charlevoix, who did not write until the next century, may not have been master of all the facts. But even his account shows that Dablon met an immense concourse of the Indians of Hudson's Bay, at their appointed place of rendezvous on the Height of Land.—G. E. L.]

There is no record of this voyage. No mention is made in Charlevoix or in the Relations of the Jesuits respecting Couture or his expedition.*

Sieur Duquet, King's Attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay in 1663 by order of Sieur D'Argenson, and renewed the act of taking possession by setting up the King's arms there a second time.

Viscount D'Argenson, who is stated by Mr. Mills at p. 129 of his Revised Report to have given the order to Duquet to proceed to Hudson's Bay, left Canada on 16th September, 1661, two years prior to the giving of the order, which it is stated Sieur Duquet received.† (Shea's Charlevoix, Vol. III., p. 65, note 5, and p. 17. N. Y. His. Docts., Vol. IX., p. 17).

In 1666 or 1667, Radisson and des Groselliéres were roaming among the Assiniboines in the region of Lake Winnipeg, and were conducted by members of that tribe to the shores of Hudson's Bay. (Mills, p. 8.)

Father Albanel and Sieur St. Simon were, in November, 1671, sent by M. Talon to Hudson's Bay, which they reached in 1672.

In the Relations of the Jesuits, Albanel gives an account of his trip, and shows that the English Company were already in possession of Hudson's Bay, having entered there under their charter.

It is quite apparent from the relation that no one had on behalf of France visited Hudson's Bay prior to his visit in 1672. Father Albanel says :—

"Jusques icy on avoit estimé ce voyage impossible aux François, qui après l'avoir entrepris déja par trois fois, et n'en ayant pû vaincre les obstacles, s'estoient veu obligez de l'abandonner dans le desespoir du succez. Ce qui paroist impossible, se trouve aisé quand il plaist à Dieu. La conduite m'en estoit deuë, apres dix-huit ans de poursuites que j'en avois faite, et j'avois des preuves assez sensibles que Dieu m'en reservoit l'execution, après la faveur insigne d'une guerison soudaine et merveilleuse, pour ne point dire miraculeuse, que je receus dès que je me fus devoüé à cette mission, à la solicitation de mon Superieur." (Rel. Jesuites, 1672, p. 56).

Up to this time (1672) the Jesuits do not appear to have heard of any prior expedition having reached Hudson's Bay. ‡

What is relied upon by the Province of Ontario as furnishing evidence of Father Dablon and Sieur Couture having visited Hudson's Bay is a memoir of M. de Callières sent to the Marquis de Seignelay in 1684 (N. Y. His. Doc., Vol. IX, p. 268); and M. de Denonville, on 8th November, 1686, by a memoir sent to M. de Seignelay, appears to have copied the statement made by M. de Callières.§ (See Ibid. p. 304.) But in his letter which accompanied the memoir, M. de Denonville says : "I annex to this letter a memoir of our rights to the entire of that country, of which our registers ought to be full, but no memorials of them are to be found." (N. Y. His. Doc., Vol. IX., p. 297). M. de Denonville thereby admits that documentary evidence could not even at that time be adduced in support of these visits having been made to Hudson's Bay.‖

---

*[The Marquis de Denonville reports of Couture's journey to the shore of Hudson's Bay : "In 1663 . . . Sieur D'Avaugour, then Governor, sent Sieur Couture thither with five others. Said Sieur Couture took possesssion anew of the head (*fonds*) of said Bay, whither he went overland, and there set up the King's arms, engraved on copper. This is proved by Sieur D'Avaugour's order of the 20th May, 1663, and the certificates of those who were sent there." (Book of Arb. Docs., pp. 111, 112.)—G. E. L.]

†[The order of D'Argenson was renewed by his successor, D'Avaugour, as appears from de Callières :—"In the same year, 1663, Sieur Duquet, King's Attorney to the *Prevôté* of Quebec, and Jean l'Anglois, a Canadian colonist, went thither again by order of the said Sieur D'Argenson and renewed the act of taking possession by setting up His Majesty's arms there a second time. This is proved by the *arrêt* of the said Sovereign Council of Quebec, and by the orders in writing of the said Sieurs d'Argenson and d'Avaugour." (Book Arb. Docs., p. 109.)—G. E. L.]

‡[And yet the overland journey of the two Frenchmen, Radisson and Des Grossellières, who went to the shores of the Bay in 1666, is related above. We have also for it the authority of the English author Oldmixon. (Book of Arb. Docs., p. 280.)—G. E. L.]

§[There is no foundation for this conjecture. The two *mémoires* bear internal evidence that they were prepared independently one of the other.—G. E. L.]

‖[This extract from the Marquis de Denonville has reference, not to Hudson's Bay, but *to the Country of the Iroquois*, south of the St. Lawrence and Lake Ontario, of which he treated in the same *mémoire*. (See the full text in the N. Y. Hist. Docs.)—G. E. L.]

At the time that M. de Callières and M. de Denonville wrote (in 1684 and 1686), it was most important to show, if possible, that Dablon and Couture had been at Hudson's Bay. The French, before that time, had driven the English from a number of their forts; and in March, 1686, Canadian troops were sent by Denonville, who surprised and captured Forts Albany, Hayes and Rupert, belonging to the Hudson's Bay Company; and it therefore became necessary to show a colour of right for these proceedings, and these memoirs were prepared with that view.*

English Discovery.

1517.

Sebastian Cabot, who sailed to Hudson's Bay and Straits under a commission from Henry VII. of England, entered the Bay, which, in 1610, took the name of Hudson. This is admitted by Mr. Mills, pp. 122 and 123. (See Bacon's History of Henry VII., Hakluyt, Vol. III, pp. 25, 26 and 27.)

1576, 1577 and 1578.

Sir Martin Frobisher, it is said, made three voyages to Hudson's Bay. He entered Hudson's Bay in 1576, and gave the name to Frobisher's Straits. (Mills, p. 123; Hakluyt, Vol. III., pp. 55 to 95; Pinkerton's Collection, Vol. XII., 490-521.)

1608-1610.

According to the narrative of Prickett (who was with Hudson during the voyage), to be found in Harris's Voyages, Vol. II., pp. 243-4, Hudson sailed on 17th April, 1610, reached the Bay now known as "Hudson's" in July of that year and wintered in the Bay, and remained there until late in the summer of 1611.

1611.

It was desired to prosecute the discoveries made by Hudson, and in 1611 His Royal Highness Henry Prince of Wales was applied to by persons concerned in the project, and he resolved to send Captain Button, who penetrated to the Hudson's Bay and sailed 200 leagues to the north-west. He wintered there at Nelson River. (Harris, Vol. II., pp. 245-404.)

1631.

It appears that the English nation had been trading with Greenland, and those trading finding that "other nations were interfering with this trade" found themselves under a necessity of having recourse to the Crown for protection and assistance, as well for defending their fisheries as for prosecuting their discoveries, and they accordingly addressed themselves to King Charles I., who furnished them with a frigate called "The Charles," under command of Captain Luke Fox, who sailed in the spring of 1631, in order to make discoveries towards the north-west. Captain Fox and Captain James met at Fort Nelson in August, 1631.

Captain Thomas James undertook his voyage in 1631 for the satisfaction of Charles I., at the expense of the merchants of Bristol. The account of the voyage was written by himself, and published in 1633. Captain James left England in May, and met Captain Luke Fox on 29th August near Port Nelson. He wintered in Hudson's Bay. (Harris's Travels, Vol. II., pp. 407, 409 and 413.)

1667 and 1668.

Des Groseilliéres and Radisson (who it is supposed were *Coureurs des bois*) were roaming among the Assiniboines and were conducted by them to Hudson's Bay.

*[There is no authority for this suggestion, and the high character and position of these two Governors are opposed to it. Besides, these were confidential reports to the French Government, which have only become public in our own day, and at the instance of the State of New York, whose early history they serve to illustrate. See a fuller reference to this matter in the argument of the Attorney-General of Ontario before the Arbitrators, *post*.—G. E. L.]

Des Groseilliéres and Radisson went to Quebec for the purpose of inducing the merchants there to conduct trading vessels to Hudson's Bay. The proposal was rejected, as the project was looked upon as chimerical by the Quebec merchants.* (Ont. Docts. p. 280.) (This does not accord with the pretensions of the French that Jean Bourdon had made a voyage there in 1656 or 1657.)

Des Groseilliéres was in London in 1667, and before going there had been in Boston and Paris in search of persons willing to fit out an expedition to explore Hudson's Bay. He met with a favourable reception, and the London merchants employed Z. Gillam, a person long used to the New England trade, to perfect this discovery. Gillam sailed in the "Nonsuch" in 1667, and on his arrival built Fort Charles, said to have been the first fort erected in the Bay,† and upon his return those engaged in the enterprise applied to Charles II. for a patent, which was issued on 2nd May, 1670, to Prince Rupert and others. (Harris's Voyages, Vol. II., p. 286.)

1669.

Captain Newland was sent out in 1669 by the same parties who in 1667 sent out Z. Gillam.

As far as the Hudson's Bay Territory is concerned, the English were first, both as to discovery and occupation. So long as the English were not there, the Indians came to Montreal and Quebec, and the French derived the benefit of the trade, which was all that was required, and they could then afford to treat as chimerical the statements of Radisson and Des Groseilliéres that Hudson's Bay could be reached with ships.* But once the English occupied the territory, erected forts and created settlements, whereby the French fur trade was cut off from the west and north, then it became necessary for them to claim title by discovery. Hence the memoir of M. de Callières to M. Seignelay, which is shown cannot be relied upon, and which De Denonville says there are no memorials to support.‡

If possession is to form a claim to the country, the evidence that the English first made a settlement and thus took possession is of the clearest character, for it is not seriously pretended that any actual possession was taken nor any settlement made until Gillam went to Hudson's Bay and built Fort Charles in 1667.§

What, then, did England obtain by taking possession and making a settlement for the purpose of occupancy by building the numerous forts on Hudson's Bay, in the year 1667 and during subsequent years? According to Vattel, Book I., Chap. 18, Sect. 207, "Navigators going on voyages of discovery furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by real possession."

"When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, etc." (*Ibid.*, Chap. 22, Sect. 226.)

"In the negotiations between Spain and the United States respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles (America said on this occasion) which are applicable to the case are such as are dictated by reason and have been adopted in practice by

*[The sole authority for this statement is Oldmixon, an English author who wrote in the next century after the event, and wrote in the interest of the Hudson's Bay Company and from materials partly furnished by the Company (see Book Arb. Docs., pp. 279, 280); and it is repeated in Harris's Voyages, an English compilation. The real reasons for the rejection of the proposal were that the French had already command of the trade by the overland channels, and that neither the merchants nor any one could engage in the trade without the License of the Governor, whose policy was to bring the trade to the posts of the St. Lawrence.—G. E. L.]

†[This was a temporary establishment, abandoned on Gillam's departure.—G. E. L.]

‡[See the answer to these statements in the preceding notes to this paper.—G. E. L.]

§[The French had the undisputed dominion and the enjoyment of the whole trade of the Hudson's Bay country secured to them by their posts and operations on the St. Lawrence and the Height of Land, and, therefore, had not found it necessary, in the absence of all adverse claims, to build any permanent establishments on the shores of the Bay.—G. E. L.]

European Powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other nations, to the same. (See Memoire de l'Amérique, p. 116.) It is evident that some rule or principle must govern the rights of European Powers in regard to each other in all such cases: and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory, so described, for the same society; to have connected its several parts together by the ties of a common interest; and to have detached them from others. If this principle is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European Power who discovered and took possession of a new country to the spot on which its troops or settlement rested—a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America.' (Phillimore's Internat. Law, 2nd ed., Vol. I., pp. 277-8-9.)

Sir Travers Twiss, in his discussion on the Oregon question, at page 300, states that "Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, *i. e.* upon her title by mere settlement, *but upon her title by discovery, confirmed by settlements in which the French nation, her only civilized neighbour, acquiesced,* and which they subsequently recognized by treaty.*"

The British nation, therefore, acquired, by discovery and by settlements made on Hudson's Bay, the possession of the country extending into the interior to the sources of the rivers emptying within that coast, which would include the Saskatchewan and English Rivers to the west, having their sources at the foot of the Rocky Mountains, and extending south and east to the sources of all the rivers flowing into James' Bay.

The law entitling England to this has been stated not only by Vattel, but has been adopted as correct by the United States, and is recognized by the highest authorities on International Law in England—Dr. Twiss and Dr. Phillimore—as being the correct principle to apply in such cases.†

If England acquired the territory claimed within the limits stated, it may for some purposes be necessary to consider what the Hudson's Bay Company took under their Charter. The Charter will be found in Ont. Docts., pp. 29–37, and at p. 33 will be found what the King grants to the Hudson's Bay Co. under the name of "Rupert's Land." First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, etc. Then the Company are created the absolute lords and proprietors of *the same territory, limits and places, etc., etc., in free and common soccage,*" with power to erect *colonies and plantations, etc.*

The Charter is very wide; and although it appears to have been conceded by the leading counsel in England (Ont. Docts., pp. 193 to 202) whose opinions were obtained that the Charter granting a monoply to the Company to trade may have been void because not sanctioned by Parliament, yet that the *territorial grant is valid*, and the only difference in the opinions appears to be to the extent of territory covered by the grant.

In 1849, on an address of the House of Commons praying that Her Majesty would be graciously pleased to direct that means be taken to ascertain the legality of the powers

*[The now known facts are that the French did not acquiesce, but always protested, and backed their protest by force of arms.—G. E. L.]

†[In applying these principles to the present case, Mr. MacMahon ignores the adverse possession of France—a possession by discovery, by contiguity, by the submission and consent of the natives, by being in the sole enjoyment of the trade—a possession *de facto* of, at all events, the sources of the rivers and the whole interior. To such a case the principles referred to have no application. (See the Argument of the Attorney-General on this point before the Arbitrators, *post.*) As to the Nelson River, the outlet of the waters of Lake Winnipeg, the first fixed settlement upon it was that of the French.—G. E. L.]

in respect to Territory, Trade, Taxation, and Government, which are, or have been, claimed by the Hudson's Bay Company, the Directors of the Company were requested to render their assistance in complying with the address of the House of Commons, which they did on the 13th of September, 1849, by enclosing to Earl Grey a statement as to their Rights as to Territory, Trade, etc., which will be found in full in Ont. Docts., pp. 288–9 and 290.

Annexed to this statement was a map showing the territory claimed by the Company as included within their Charter; and a copy of this map was likewise produced in 1857 to the Select Committee of the House of Commons, and is attached to the Report of that Committee. This map shows that on the south the Company claimed to the land's height, and on the west to the foot of the Rocky Mountains.

On 30th Oct., 1849, Earl Grey enclosed to the then law officers of the Crown the statement and map furnished by the Company, requesting an opinion as to the rights of the Company.

The opinion furnished is as follows:—

(*Copy of a Letter from Sir John Jervis and Sir John Romilly to Earl Grey.*)

Temple, January, 1850.

My Lord,—We were honoured with your Lordship's commands contained in Mr. Hawes's letter of the 30th October last, in which he stated that he was directed by your Lordship to transmit to us the copy of a Resolution of the House of Commons, that an Address be presented to Her Majesty, praying that measures may be taken for ascertaining the legality of the powers which are claimed or exercised by the Hudson's Bay Company on the Continent of North America.

Mr. Hawes then stated that he was to enclose the copy of a letter from the Chairman of the Hudson's Bay Company, together with a statement and map, prepared under his direction, of the territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second.

Mr. Hawes also sent the copy of a letter, dated the 30th September last, from Mr. A. K. Isbister, inquiring in what mode Her Majesty's Government intend to give effect to the Resolution of the House of Commons, and whether, in the event of any reference to a judicial tribunal, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and, if so, of what nature.

Mr. Hawes concluded by stating that your Lordship requested that we would take these papers into our early consideration, and inform you whether we are of opinion that the rights claimed by the Company do properly belong to them. In the event of our entertaining a doubt on any point raised in these papers, Mr. Hawes was to request that we would advise your Lordship in what manner the opinion of a competent tribunal can be obtained on the subject.

In obedience to your Lordship's command, we have taken these papers into our consideration, and have the honour to report that, having regard to the powers in respect to territory, trade, taxation, and government, claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the Chairman of that Company, we are of opinion that the rights so claimed by the Company do properly belong to them.

Upon this subject we entertain no doubt; but as it will be more satisfactory to the complainants against the Company, to the promoters of the discussion in the House of Commons, and possibly to the Company themselves, if the questions are publicly argued and solemnly decided, we humbly advise your Lordship to refer these questions to a competent tribunal for consideration and decision, and to inform Mr. Isbister that he may appear as complainant, and the Company that they may be heard as respondents upon the argument. The proper mode of raising the question for discussion will, we presume, be for Mr. Isbister, or some other person, to embody in a Petition to Her Majesty the complaints urged against the Hudson's Bay Company; and such a Petition may be referred by Her Majesty either to the Judiciary Committee, under the 4th section of the Statute 3 and 4 William IV. c. 41, or to the Committee of Trade, as involving questions within their jurisdiction. The Judicial Committee, from its constitution, is the best

fitted for the discussion of a case of this description, and we recommend that to that tribunal the proposed Petition should be referred.

(Papers relating to H. B. Co., presented to House of Commons, pp. 7-8.)

On 6th June, 1850, Earl Grey caused to be sent to Sir John Pelly a letter, from which the following extracts are taken :—

(*Extract of a Letter from B. Hawes, Esq., to Sir John Pelly, Bart., dated Downing Street, 6th June, 1850.*)

"With reference to your observation, that 'it would be of the utmost importance if the decision of the Privy Council on the rights and privileges of the Company were sent to Hudson's Bay by one of the ships appointed to sail on the 8th instant,' I am to remind you that the proceedings for the purpose of giving effect to the Resolution of the House of Commons of 5th July, 1849, have not led to any reference to the Privy Council, and that the question raised in that Resolution stands in the following position :—

"Steps having been taken, as you are aware, to obtain from the Hudson's Bay Company a statement of its claims, that statement was duly submitted to Her Majesty's law advisers, and Her Majesty's Government received from them a report that the claims of the Company were well founded. It was observed in that report that, with a view to the fuller satisfaction of the House of Commons, and the parties interested, it would be advisable to refer the inquiry to a competent tribunal, and that the proper method of raising a discussion upon it would be for some person to address a Petition to Her Majesty, which Petition might then be referred either to the Judicial Committee or the Committee of Privy Council for Trade and Plantations.

"Such a Petition was, therefore, essential to the complete prosecution of the inquiry. Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's Territories, and had questioned the validity of the Company's Charter, an opportunity to prefer the necessary Petition if they were so disposed ; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law officers of the Crown in their favour to be well founded."

(Papers relating to H. B. Co., presented to House of Commons, p. 15.)

The law officers of the Crown—Sir Richard Bethell, Attorney-General, and Sir Henry S. Keating, Solicitor-General—gave an opinion in 1857 (Ont. Docts., pp. 200-1), "That the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment which has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature.

"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the Charter ; but that, on every legal principle, the Company's territorial ownership of the lands and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations) ought to be deemed to be valid.

"The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this Charter, when the words, as is often the case, are indefinite and ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms *the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750.*"

Now, what were the Hudson's Bay Company claiming as their territorial rights at the time of the Treaty of Ryswick (1697) and after the Treaty of Utrecht (1713), and also in 1750?

By the 7th and 8th Articles of the Treaty of Ryswick, certain things were to be done—(1) the Treaty was to be ratified, and (2) after the ratification Commissioners were to be appointed who were "to examine and determine the rights and pretensions which either of the said Kings had to the places situate in Hudson's Bay."* (Ont. Docts., pp. 15 and 16.) And although Commissioners were appointed, and although claims were at different times advanced by the Hudson's Bay Company (as will presently be stated), nothing was done by the Commissioners to determine such rights and pretensions.

"After the Commissioners have determined those differences and disputes, the Articles the said Commissioners shall agree to shall be ratified by both Kings, and shall have the same force and vigour as if they were inserted word for word in the present Treaty." (Treaty of Ryswick, Art. 8, Chalmers' Treaties, Vol. I., p. 335.)

The English and French Governments went on negotiating, under the Treaty, until 1702, when the war of succession broke out and all negotiations were at an end.

It has been stated, and urged as a ground against the later pretensions of the Hudson's Bay Co., that in July, 1700, they were willing to contract their limits. While willing to do this for the purpose of effecting a settlement, and only on condition of their not being able to obtain "the whole Straits and Bay which of right belongs to them." (Ont. Docts., p. 123.)

Nothing was done under this, and the Hudson's Bay Co. were again addressed by the Lords of Trade and Plantations in January, 1701, when they again insist on their rights to the whole Bay and Straits, but are willing to forego their rights to a certain extent if by that means they can secure a settlement. "But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it." (Ont. Docts., pp. 124-5.)

In May, 1709, the Company were requested by the Lords of Trade and Plantations to send an account of the encroachments of the French on Her Majesty's Dominion in America within the limits of the Company's Charter; to which the Company replied, setting forth their right and title, and praying restitution. (Mills, pp. 152-3.)

A further petition was sent by the Hudson's Bay Company to the Queen in 1711. (Ont. Docts., pp. 126-7.)

Nothing was done by the Commissioners towards the determination of the differences and disputes up to the time when Count de Torcy, on behalf of France, made a proposition, in April, 1711, with a view of bringing about a general peace between England and France; and while these negotiations were in progress, and on 7th February, 1712, the Hudson's Bay Co. set forth what they desired should be stipulated for them at the ensuing treaty of peace. (Ont. Docts., pp. 128-9.)

For reasons thought very cogent, it is not supposed the question of *post liminy* will require much, if any, consideration; but as no point should be overlooked which ought, or even might, be considered in the case, the subject is therefore shortly considered.

Vattel, Book III., cap. 14, sec. 20, defines the right of *post liminy* to be "that in virtue of which persons and things taken by the enemy are restored to their former estate on coming again into the power of the nation to which they belonged."

"The Sovereign is bound to protect the persons and property of his subjects, and to defend them against the enemy. When, therefore, a subject, or any part of his property, has fallen into the enemy's possession, should any fortunate event bring them back again into the Sovereign's power, it is undoubtedly his duty to restore them to their former condition—to re-establish the persons in all their rights and obligations—to give back the effects to the owners—in a word, to replace everything on the same footing on which it stood previous to the enemy's capture. (*Ibid.*, sec. 205.)

"Provinces, towns and lands, which the enemy restores by the treaty of peace, are

* [But certain places previously taken by the French were in any event to remain to them under the express terms of the 8th Article of the Treaty.—G. E. L.]

certainly entitled to the right of *post liminium;* for the Sovereign, in whatever manner he recovers them, is bound to restore them to their former condition as soon as he regains possession of them. (*Ibid.*, sec. 205.) The enemy, in giving back a town at the peace, renounces the right he had acquired by arms. It is just the same as if he had never taken it; and the transaction furnishes no reason which can justify the Sovereign in refusing to reinstate such town in the possession of all her rights, and to restore her to her former condition." (*Ibid.*, sec. 214.)

It is submitted, however, that, as between the Dominion and Province of Ontario, the question whether the Hudson's Bay Company were entitled to demand the right of *post liminium* is of no consequence whatever.*

The late Chief Justice Draper, when acting as agent for the Province of Canada, delivered to the House of Commons Committee, on the 28th of May, 1857, a paper relative to the boundaries, wherein it is stated;

"The 8th article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards."† (Ont. Docts., p. 240.)

Lord Dartmouth's letter of the 27th May, 1713 (Ont. Docts., p. 129), enclosing the petition of the Hudson's Bay Company, shows what was the design in not accepting an "Act of Cession" from the French King; and Her Majesty the Queen "insisted only upon an order from the French Court for delivering possession; *by this means the title of the Company is acknowledged*, and they will come into the immediate enjoyment of their property without further trouble."

The sections of the Treaty of Utrecht having any bearing upon the question are the 10th and 15th, to be found in Ont. Docts., pp. 16 and 17.

Under sec. 10 the King of France was "to *restore* to the Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, coasts, rivers, and places situate in the said Bay and Straits, and which belong thereunto; *no tracts of land or of sea being excepted which are at present possessed by the subjects of France.*" * * * "The same Commissaries shall also have orders to describe and settle in like manner the boundaries between the *other* British and French colonies in those parts."

In the wording of the 10th article a great deal of discussion arose as to whether the word "restore" or the word "cede" should be used. Count de Torcy, in January, 1713, says: "The plenipotentiaries now make no difference between places 'ceded' and places 'restored.'" (Bolingbroke's Correspondence, Vol. III., p. 601.) But in March, 1713, he says that the truth is so evident that the plenipotentiaries of Great Britain at Utrecht always make a distinction between places that should be "ceded" and those that should be "restored." (Bolingbroke's Correspondence, Vol. III., p. 605.)

Great Britain was contending that as France had dispossessed her of Hudson's Bay Territories, the French should "restore" them, while the French desired to use the word "cede," as if the territories had belonged to the French, and they were for the first time ceding them to Great Britain. The word "restore" was used, and it is important to examine the original text of the treaty, which is in Latin. The words used in that article, "spectantibus ad eadem," show clearly that France was to restore to England all the lands looking towards the Hudson's Bay; in other words, the whole water-shed of the waters running into the Hudson's Bay.‡

The first part of the 10th section does away with any exception, and left nothing for the French to hold possession of in Hudson's Bay.

---

* [See this question of post liminy treated in Mr. Mills' revised Report, pp. 167-171.—G. E. L.]

† [See note * *ante*, p. 38.—G. E. L.]

‡ [There were two originals of the Treaty, of co-ordinate authority, the one in Latin, the other in French. In the official English copy, published by authority of the British Government in 1713, and which may, therefore, be taken as a contemporaneous interpretation of the Latin original by the highest authority, the words in question are rendered "and which belong thereunto;" and the French original agrees with the English version, its words being "*et lieu qui en dependant.*" (Chalmers' Treaties, Vol. 1; Le Clerq, Recueil, tom. 1.) According to a well-known and settled principle of international law, France, as the party called upon to make sacrifices, had a right to select that original of the Treaty, and that reading of the text, which would be the most favourable to her interests (Vattel, Book 4, sec. 32).—G. E. L.]

Mr. Mills, at p. 159 of his report, after quoting the portion of the 10th section above referred to, says: "The words of the Treaty just quoted and the attendant circumstances show that what was claimed by England and yielded by France was the Bay and the country upon its margin. Nevertheless, the language of the Treaty *did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the land's height.** France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

The Treaty not only made it possible for England to insist upon the possession of the whole country to the land's height,* but from the very moment Commissaries were appointed as provided by the Treaty she always insisted that she was entitled to the whole country, and it will be apparent that France assented to this contention as being the correct interpretation of the Treaty.

Although Commissaries were appointed as provided by the Treaty, and notwithstanding the Commissaries failed to define the boundaries between the territories of each of the Governments, it was in some manner assumed that the boundary had been settled by the 49th parallel; and this was looked upon by the Americans and by the English themselves as being the southern boundary of the Hudson's Bay Company's Territory. And we find that in the discussion which took place in regard to the boundary line from the north-west angle of the Lake of the Woods to the Rocky Mountains, the United States asserting on the one hand, and Great Britain not denying on the other, that the 49th parallel was the boundary between their respective countries, because it was the southern boundary of the Hudson's Bay.†

"From the coast of Labrador to a certain point north of Lake Superior, those limits were fixed according to certain metes and bounds, and from that point the line of demarcation was agreed to extend indefinitely due west along the 49th parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana." (Greenhow's Oregon, 2nd ed., p. 460.)

Whether a boundary was ever agreed upon, or whether it was merely assumed that the boundary above stated had been assented to, cannot now be of much importance, as in 1760 the Marquis de Vaudreuil did not pretend that the Canada of the French extended in a north-westerly direction beyond the Red Lake.‡

On the 4th August, 1714, the Hudson's Bay Company sent a memorandum to the Lords Commissioners of Trade and Plantations, accompanied by a map in which they claimed that the eastern boundary should be a line running from Grimington's Island through Lake Miscosinke or Mistassinnie, and from the said lake by a line run south-westward into 49 degrees north latitude, *as by the red line may more particularly appear, and that that latitude be the limit;* that the French do not come to the north of it, nor the English to the south of it. (Ont. Docts., pp. 131-2.)

When, in 1719, Commissaries were appointed, the instructions given to Mr. Pultney and Col. Baden, the British Commissaries, were explicit to claim to the 49th of north latitude, where another line was to begin and extend westward upon the 49th of north latitude, over which said lines the French were to be prohibited from passing. (Ont. Docts., p. 362.)

In order that there might be no mistaking the full extent of the demand of the British Government, and to show that, under the Treaty, England was claiming the whole territory northward to the height of land and westward to the Rocky Mountains, the English Commissaries in 1719 sent to the French Commissaries a memoir on the subject of the boundary, in which they set forth that "the French *since* the Treaty of Utrecht had made a settlement at the source of the River Albany, the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the Fort, if there be any such building, shall be given up to the Company of English merchants trading in Hudson's Bay aforesaid."

*[The context of Mr. Mills' remarks explains this statement and shows that the intention was, on both sides, to make the limits much more contracted. (Mr. Mills' revised Report, pp. 159, 160.)—G. E. L.]

†[For answer to this statement, see note ‖, p. 254, *ante*.—G. E. L.]

‡[The correspondence shews that the Marquis de Vaudreuil made no such limitation. (See the letters in Mills' revised Report, pp. 51-4.)—G. E. L.]

"The said Commissaries further demand that the subjects of His Most Christian Majesty *shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the Company* of English merchants trading into Hudson's Bay, and to such Indians as wish to traffic with them."* (Ont. Docts., p. 365.)

Sir Travers Twiss says :—

"The object of the 10th Article of the Treaty of Utrecht was to secure to the Hudson's Bay Company the restoration of the forts and other possessions of which they had been deprived at various times by French expeditions from Canada, and of which some had been yielded to France by the 7th Article of the Treaty of Ryswick. By this latter Treaty Louis XIV. had at last recognized William III. as King of Great Britain and Ireland ; and William, in return, had consented that the principle of *uti possidetis* should be the basis of the negotiations between the two Crowns. By the 10th Article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, 'to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto ; no tracts of land or sea being excepted which are at present possessed by the subjects of France.' The only question, therefore, for Commissaries to settle were the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain.†

"If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lakes Mistassinnie and Abbitibis, the Rainy Lake, in 48° 30′, which empties itself by the Rainy River into the Lake of the Woods, the Red Lake, and Lake Travers.

"This last lake would have been the extreme southern limit in about 45° 40′, whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about the 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson's Bay district ; and so we find that in the limits of Canada, assigned by the Marquis de Vaudreuil himself,‡ when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior ;§ on the other, 'follows a serpentine course southward to the River Oubache, or Wabash, and along it to the junction with the Ohio.' This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September."‖ (Historical Memorial of the Negotiations of France and England from March 26th to Sept. 20th, 1761. Published at Paris by authority.) (Twiss' Oregon Boundary, pp. 209–211.)

*[See as to this the argument of the Attorney-General before the Arbitrators, *post.*—G. E. L.]

†[The Treaty is, in terms, opposed to this contention : "It is agreed on both sides to determine, within a year, by Commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and *the places appertaining to the French.*" (Art. 10 of the Treaty.) And Mr. Mills proves (pp. 159, 160,) that the negotiators of the Treaty had drawn upon the maps certain lines by which the Commissaries were to be guided ; which lines were north of the Height of Land.—G. E. L.]

‡[The Marquis de Vaudreuil positively denied that he assigned any such limits. In a letter of 30th October, 1761, to the Duc de Choiseul, he says : "When I capitulated I traced no limits whatever, and in all the messages that passed between the English General and me, I made use of the word 'Canada' only." (Book Arb. Docs., p. 159.) The line of the Mississippi was ultimately agreed on as the boundary. See the Treaty, *Ib.*, p. 18.—G. E. L.]

§[This is a mistake : there is no line drawn to Lake Superior on the map. (See the copy annexed to the original edition of the Dominion Case).—G. E. L.]

[It might well have been assented to ; for, if accepted by England, those limits would have left to France a considerable part of Canada which should have been surrendered to England.—G. E. L.]

"By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head-waters of the rivers emptying themselves into the Bay of Hudson ;* by the Treaty of Paris they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies ; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after the Treaty to the north-west of the sources of the Mississippi will be obvious when it is kept in mind that the sources of the Mississippi are in 47° 35′, whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Travers, in about 45° 40′." (Twiss' Oregon, p. 226.)

It has not been thought necessary to refer to the numerous maps described in the Ontario Documents, as, unless a map has been made use of in connection with a treaty, or a boundary has been defined thereon, but little reliance can be placed upon it.† Sir Travers Twiss says :—"The claim, however, to the westwardly extension of New France to the Pacific Ocean requires some better evidence than the maps of French geographers. A map can furnish no proof of territorial title : it may illustrate a claim, but it cannot prove it. The proof must be derived from facts which the law of nations recognizes as founding a title to territory. Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequently founded on fictitious or erroneous statements : *e. g.*, the map of the discoveries of North America by Ph. Buache and J. N. DeLisle in 1750, in which portions of the west coast of America were delineated in accordance with De Fonte's story, and the maps of North-west America at the end of the seventeenth and beginning of the eighteenth centuries, which represent California as lately ascertained to be an island. (Twiss' Oregon, pp. 305–6.)

When new Commissaries were appointed in 1750, the Lords of Trade and Plantations requested the Hudson's Bay Company to furnish a memorandum showing the limits claimed, which was done on the 3rd of October in that year, and is substantially as claimed by them in 1719. (Mills, pp. 176–7.)

It were well to consider what territory was comprised within the limits of Louisiana, as this will prove a help to arriving at a proper conclusion as to what England claimed as being comprised in "Canada," or "New France."

According to extracts (Ont. Docts., pp. 41–2) copied from the Charter of Louis XIV. to M. Crozat, Sept., 1712, it will be seen that Louisiana "was the country watered by the Mississippi and its tributary streams from the sea-shore to the Illinois," *i. e.*, the Illinois River‡ was the northern boundary of Louisiana according to this "authoritative document of the French Crown." By the same public document all the rest of the French possessions were united under the Government of New France. (Twiss' Oregon, pp. 219–220.)

In the course of the negotiations respecting the limits of the Provinces of Canada and Louisiana, the Marquis de Vaudreuil, who signed the surrender, published his own account of what passed between Sir J. Amherst and himself, of which he considered the English account to be incorrect. "On the officer showing me a map which he had in his hand I told him the limits were not just, and verbally mentioned others extending Louisiana on one side to the carrying-place of the Miamis, *which is the height of the lands whose rivers run into the Œuabache ; and on the other to the head of the river of the Illinois.*" (Annual Register, 1761, p. 268.) Even thus, then, all to the north of the Illinois was admitted to be Canada." (Twiss' Oregon, pp. 220–221.)

What took place at the various conferences respecting the limits of Canada has been procured from the records of the Foreign Office.

---

*[The Treaty fails to disclose any such acknowledgment.—G. E. L.]

†[The degree of credit to be given to a map, as to a history or a work on geography, depends very much on the standing of the author. Maps have been appealed to and used in all international questions of boundary that we know of, and on both sides.—G. E. L.]

‡[Not the Illinois River, but the Illinois Country is here meant.—G. E. L.]

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt a memorandum upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus :

"Sur les limites de la Louisiane.

"Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une ligne qui s'étendra depuis Rio Perdido entre la Baye de la Mobile et celle de Pensacola, en passant par le Fort Toulouse chez les Alibamons, et qui, se prolongeant par la pointe occidentale du Lac Erié enfermera la Rivière des Miamis, et par l'extremité orientale du Lac Huron, ira aboutir à la hauteur des terres du côté de la Baye d'Hudson vers le Lac de l'Abitibis, d'où la ligne sera continuée de l'Est à l'Oüest jusques et compris le Lac Superieur." (Pub. Rec., Off. Vol. 483.)

Instructions, however, accompanied by an ultimatum, were transmitted under date of the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to ; and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken was "the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis de Vaudreuil had surrendered to General Amherst as Canada, and defined himself, with his own hand, as comprehended in the government of that Province where he commanded," and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil :—

"Le Canada, selon la ligne de ses limites traceé par le Marquis de Vaudreuil lui-même, quand ce Gouverneur-Général a rendu, par capitulation, la dite Province au Général Britannique le Chevalier Amherst, comprend d'un côte, les Lacs Huron, Michigan et Superieur, et la dite ligne, tirée depuis Lac Rouge embrasse, par un cours tortueux, la Rivière Ouabache (Wabash) jusqu' à sa jonction avec l'Ohio, et de là se prolonge le long de cette dernière rivière inclusivement, jusques à son confluent dans la Mississippi ;" and on this definition of the limits of Canada its cession was claimed—a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject. (Pub. Rec., Off. Vol. 483.)

Annexed will be found a copy of that map of M. de Vaudreuil to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October, 1760, from which document also the following extracts have been taken :—

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil."*

"The Government of Quebec begins with Trondines on the north-west and de Chaillon on the south-east, and takes in all the parishes from them down the River St. Lawrence." (Pub. Rec., Off. Vol. 94, Ama. and W. Indies.)

It is further recorded on the 2nd September, 1761, the Marquis de Vaudreuil's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month, which runs as follows :—

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France, in the description which your memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, has greatly enlarged his jurisdiction ; he added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated." (Minutes of a Conference at Paris, Sept. 2nd, 1761. Pub. Rec., Off. Vol. 483, France.)

The last Mémoire of France to England in these negotiations is dated Sept. 9th, 1761, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

* [This is a mistake : it now appears that the line was marked by Gen. Haldimand. (See the correspondence, Mills, pp. 51-4.)—G. E. L.]

The first Article fully confirms the acceptance by France of the de Vaudreuil map,* and states as follows:—

"Le Roi, a dit dans son premier mémoir de propositions et dans son ultimatum, qu'il cederoit et garantiroit à l'Angleterre la possession du Canada dans la forme la plus etendue: Sa Majesté persiste dans cette offre: et sans disenter sur la ligne des limites, tracé dans une carte presentée par M. Stanley, comme cette ligne demandée par l'Angleterre, est sans doute la forme la plus étendue que l'on puisse donner à la cession le Roi vent bien l'accorder." (Mémoire Historique sur la Negotiation de la France et de l'Angleterre, 1761, p. 52. F. O. Lib. 4to, No. 434.)

Then came the Treaty of Paris, concluded on 10th February, 1763, by which the Canada of the French was ceded to Great Britain.

By the 7th section of this Treaty, "It is agreed that for the future the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Pontchartrain to the sea." (Ont. Docts., pp. 18-19.)

As the source of the River Mississippi was Red Lake, and as it was from that point that the Marquis de Vaudreuil directed the red line to be drawn, there can be no difficulty in coming to a conclusion as to what was included within the bounds of the "Canada" of the French.†

Now, the proclamation of the King on 7th October, 1763, created four separate Governments, viz.: Quebec, East Florida, West Florida and Grenada.

All the lands not within the limits of the said Governments, and not within the limits of the territory granted to the Hudson's Bay, were for the present reserved for the protection and dominion of the Indians. (Ont. Docts., p. 26.)

Quebec Act, 1774.

When the Quebec Act of 1774 was introduced, it was designed to extend the bounds of the Province of Quebec far beyond those created by the Proclamation of the King, issued in October, 1763. By the Act, as originally introduced, it was evidently intended to include in the Province of Quebec "all the territories, islands and countries heretofore a part of the territory of *Canada*, in *North America, extending southward to the banks of the Mississippi*, and northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay, and which said territories, islands and countries are not within the limits of the other British colonies as allowed and confirmed by the Crown, or which have since the 10th February, 1763, been made a part and parcel of the Province of Newfoundland." (Mills, pp. 77-8.)

Now, in the Act as passed, the words "*heretofore a part of the territory of Canada*" are left out, and the Act included "all the territories, islands and countries in North America belonging to the Crown of Great Britain," between certain defined limits along the western boundary of the then Province of Pennsylvania until it strike the River Ohio; and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading in Hudson's Bay; and all the territories, islands and countries which have since the 10th February, 1763, been made part of the Government of Newfoundland, be, and they are hereby, during Her Majesty's pleasure, annexed to

* Yet on the 30th Nov., weeks after the cessation of these negotiations, M. de Vaudreuil addressed a letter to the Duc de Choiseul, which was published, as stated in the Annual Register of 1761, "to quiet the minds of the people," and in which the Marquis stated that what he was charged with by the English as regards the limits of Canada was entirely false and groundless, and that nothing passed in writing on that head, nor was any line drawn on any map.—An. Reg., 1761, pp. 267-8. (See M. de Vaudreuil's letter, Ont. Docts., p. 159.)

[The above is a note to the Dominion case. The Marquis de Vaudreuil's statement is borne out by Gen. Haldimand's letter. (See it in Mills, pp. 52-4; Ho. Coms. Report, 1880, p. 233.) As to the assent of France, see note ‖, p. 288, *ante*.]

† [See note ‡, p. 288, *ante*.—G. E.L.]

and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of 7th day of October, 1763. (Ont. Docts., p. 3.)

On reading this description it will be seen that the east bank of the Mississippi could not have been intended as the western limit.

Whenever the bank of a river or lake is created a boundary, the Act expressly states such to be the case, as "the eastern bank of the River Connecticut," "the eastern bank of the River St. Lawrence," "thence along the eastern and south-eastern bank of Lake Erie," and "along the bank of the said river (Ohio) until it strikes the Mississippi." Now, when the River Mississippi is reached the description does *not* proceed "along the bank of said river," as in the other descriptions, but describes the remaining limit as "northward to the southern boundary of the territory granted to the Merchants Adventurers of England."

It is said that the word "northward" in the Act cannot mean "north," and that, therefore, a line drawn north from the junction of the Ohio and Mississippi rivers to the southern boundary of the Hudson's Bay Company's lands would not conform to the description in the Act.

The meaning of the expression "northward," as used in this Act, received judicial interpretation in the year 1818, on the occasion of the trial of Charles de Reinhardt for murder committed at the Dalles; and also during the trial of Archibald McLennan, in the same year, for a like offence.

The Judges of the Court of Queen's Bench in Lower Canada, in giving judgment in these cases (Ont. Docts., pp. 226-7-8), were clearly of opinion that the western limit of Upper Canada was a line drawn due north from the junction of the Ohio and Mississippi rivers.*

In the Treaty between Great Britain and the United States, in 1846, the term "westward" was used, and it was interpreted to mean "due west."† (U. S. Treaties and Conventions, p. 375.)

Because the Commission which issued to Sir Guy Carleton in 1774 extended the boundary of the Province "along the eastern bank of the Mississippi river to the southern boundary of the territory granted to the Hudson's Bay Company," it is asserted that the Commission should govern.

The fact of a Commission having been issued with this extension, not authorized, cannot be made to extend the boundaries created by the Act. These Commissions, being mere instructions to the Governor-General, can have no effect in altering territorial boundaries.‡

The Commission to Governor Andros, of Connecticut, gave him authority to the South Sea.

Lord Elgin's Commission as Governor-General, issued in 1846, apparently gave him jurisdiction to the shore of Hudson's Bay; but it never was claimed or pretended that the Commission extended the boundaries of Canada to the shore of that Bay.§ (For Commission, *vide* Ont. Docts., pp. 51-52.)

---

*[See notes, ‡, p. 211, *ante*, and *, p. 272, *ante*. See also the argument of the Attorney-General before the Arbitrators as to this point, *post*.—G. E. L.]

†[On the other hand, in the Quebec Act, 1774, the term "westward" is applied to a course which follows the sinuosities of the River Ohio. (See the Act, Book Arb. Docs., p. 3.)—G. E. L.]

‡[The Commissions and the "instructions" to the Governors are separate and different documents. Ontario has never admitted that Upper Canada had, before these Commissions, limits less extensive than the Commissions assigned to the Province. On the contrary, as to the Commissions of 1774, the contention of Ontario was, that these Commissions are a contemporaneous exposition of the meaning of the Act of that year by the very highest authority—the Ministers and Law Advisers of the Crown—the authors of the Act itself; but that *if* the boundary of the Act was the due north line claimed on behalf of the Dominion, it was competent for the Crown, in the exercise of its prerogative, and by this public instrument under the Great Seal, to unite, and that the Crown did thereby unite, to Upper Canada, that portion of the unorganized territories of the Crown which lay between such due north line and the Mississippi; and that any possible question as to the boundary under the Act was thus immaterial.—G. E. L.]

§[Some eight other Commissions, appearing in the Book of Documents, give Upper Canada the like boundary. (See Book Arb. Docs., pp. 50, 51, 390.) As soon as the question of boundary arose, Ontario claimed all the territory which this boundary gave. (See Book Arb. Docs., p. 423.)—G. E. L.]

1791.—The Constitutional Act.

What is known as the Constitutional Act of 1791 (31 Geo. III., cap. 31) was passed to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled "An Act for making more effectual provision for the government of the Province of Quebec, in North America," and to make further provision for the government of the said Province.

"Whereas an act was passed in the fourteenth year of the reign of his present Majesty, entitled 'An Act for making more effectual provision for the government of the Province of Quebec, in North America;' and whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said Province; and whereas it is expedient and necessary that further provision should now be made for the good government and prosperity thereof; may it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, shall be and the same is hereby repealed.

"And whereas His Majesty has been pleased to signify, by his message to both Houses of Parliament, his royal intention to divide his Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, &c." (Ont. Docts., p. 4.)

The Proclamation of November, 1791 (Ont. Docts., p. 27), declares that by an Order in Council of August it was ordered that the Province of Quebec should be divided into two distinct Provinces. But it is argued that this Proclamation annexed to Upper Canada territories not included in the Province of Quebec. This argument is based upon the use of the word "Canada" at the end of the first paragraph of the Proclamation.

It is stated the 14th Geo. III. "is in many respects inapplicable to the present condition and circumstances of the said Province." To what Province is it inapplicable? Why, to the Province of Quebec. The Act says the intention of the King was "*to divide his Province of Quebec into two separate Provinces.*"

His Majesty, on the 24th day of August, 1791, "was pleased, by and with the advice and consent of his Privy Council, to order that the Province of Quebec be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the line of division inserted in the said order." (Ont. Docts., p. 389.)

The Act of Parliament was that alone upon which the Order in Council could be based or the Proclamation issued; and it is quite evident that neither the Order in Council nor the Proclamation intended to do more than the Act made provision for, *i.e.*, to divide the Province of Quebec.*

The construction put upon this Act by the Court of Queen's Bench in Lower Canada, in De Reinhardt's case and in McLennan's case (Ont. Docts., pp. 226-7-8), was that "Upper Canada could include only that part of the Province so divided as was not contained in Lower Canada, but it could not extend beyond those limits which constituted the Province of Quebec."†

---

*[The Act did not divide the Province of Quebec; nor did it deal or profess to deal with the boundaries of the two new Provinces of Upper and Lower Canada: its sole object was to provide a constitution for these Provinces, which was to take effect when the division should be made by the King. (See the Act, Book Arb. Docs., p. 4.) The King, prior to the passing of the Act, communicated to the two Houses of Parliament the division and boundaries which he contemplated. (See the Order in Council settling these boundaries, and the Paper so submitted to Parliament, Book Arb. Docs., pp. 388-9, 411.)—G. E. L.]

†[Upper Canada judges took a different view. (See notes, ‡, p. 211, *ante*, and *, p. 272, *ante*.) Many of the grounds for maintaining such different view were not before the Lower Canada Court. (See Attorney-General's argument before the Arbitrators, *post*.)—G. E. L.]

In the Commission issued to Lord Dorchester, Sept. 12, 1791, as Captain-General and General-in-Chief of the Province of Upper Canada and Lower Canada (wherein the Order in Council of 19th August, 1791, is recited), it states the intention to divide the Province of Quebec into two separate Provinces, "the Province of Upper Canada to comprehend all said lands, territories and islands lying westward of the said line of division as were part of our said Province of Quebec." (Ont. Docts., p. 48.)

The Commission issued in 1794 to Henry Caldwell, Esquire, Receiver-General of the Province of Lower Canada, contains a boundary description of Upper Canada similar to that in the Commission of Lord Dorchester. (Ont. Docts., pp. 389-390.)

The ten Commissions issued to the Governors-General of the Provinces of Upper and Lower Canada between December, 1796, and 1st July, 1835, contain boundary-line descriptions similar to that of Lord Dorchester in September, 1791.

On the 13th December, 1838, a Commission was issued to Sir John Colborne as Governor-in-Chief of the Province of Upper Canada, in which, after describing the other boundaries of the Province, it proceeds: "On the west by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior." (Ont. Docts., p. 390.)

The Commission to the Right Hon. Sir Charles Poulett Thomson, dated 6th Sept. 1839, contains boundary descriptions similar to above. (*Ibid.*, p. 390.)

29th August, 1840.

The Act of Union (Impl. Act 3, 4 Vic., cap. 35) was passed to make "provision for the good government of the Province of Upper Canada and Lower Canada, * * * * which, after the passing of this Act, shall form and be one Province under the name of the Province of Canada." (Ont. Docts., p. 10.)

After the passing of the Union Act, and on the 29th August, 1840, a Commission was issued to Lord Sydenham as Governor-in-Chief of the Province of Canada. The Commission gives the western boundary of the united Provinces, as in the Commission to Sir John Colborne. (Ont. Docts., p. 51.)

The Commission to Lord Metcalf in February, 1843, and that to Earl Cathcart in March, 1846, and the one issued to Lord Elgin on 1st October, 1846, contain boundary-line descriptions of Upper Canada similar to that issued to Lord Sydenham in 1840.

It will be seen that, between December, 1838, when Sir John Colborne was appointed Governor-General, until 1852 or 1853, when Lord Elgin's term as representative of Her Majesty expired, the British Government understood and treated the western boundary of Upper Canada as being on the shore of Lake Superior;* and it is fair to infer that the Imperial authorities were not ignorant that a line drawn north from the junction of the Ohio and Mississippi would strike the shore of Lake Superior, and they no doubt intended that where the line so struck should be the limit of the jurisdiction of the Governor-General, and consequently the westerly limit of the Province of Upper Canada.

Then, in order to reach offenders for crimes committed in the Indian territory

* [The reason that the Commission of 1838 traced the southern boundary into Lake Superior, and omitted any further description of it, was probably that the Commissioners appointed under the Treaty of Ghent had agreed upon a line extending only "into Lake Superior . . . to a point in said lake 100 yards to the north and east of a small island named on the map Chapeau, and lying opposite and near to the north-eastern point of Ile Royale;" and had disagreed "as to the course of the boundary from the point last mentioned in Lake Superior to another point, designated in the maps, at the foot of the Chaudiere Fall in Lac la Pluie," the American Commissioner contending for a line to and by the River Kamanistiquia and Dog Lake, and the British Commissioner for a line to and by Fond du Lac and the St. Louis and Vermillion Rivers. (See the Report of the Commissioners in Hertslet's Treaties, vol. 13, p. 892.) The portion of the line so not agreed upon was settled under the Treaty of 1842, which ran the line from the point in Lake Superior "where the line marked by the Commissioners terminates," to Pigeon River, and thence to Lac la Pluie and the Lake of the Woods. (See the Treaty, Book Arb. Docs., p. 21.) It was, no doubt, from oversight that no change was made in the form of the Commissions subsequent to this Treaty of 1842, for although St. George's or Sugar Island, as to which the Commissioners had also disagreed, was assigned by the same Treaty to the United States, yet it continued to be treated in the Commissions, including Lord Elgin's, as belonging to Great Britain; and so also with Drummond Island, which the Commissioners had appropriated to the United States. (See the Treaty; see also the Commissions in question, Book of Arb. Docs., pp. 51-2.)—G. E. L.]

(reserved for the Indians by the proclamation of October, 1763), the Act of 43 Geo. III., cap. 138 (11th August, 1803), was passed. (Ont. Docts., pp. 4-5.)

As doubts existed as to whether the provisions of 43 Geo. III., cap. 138, extended to the Hudson's Bay Territory, the Act 1 and 2 Geo. IV., cap. 66 (2nd July, 1821), was passed, including the Hudson's Bay Company's *lands* and *territories heretofore* granted to the Hudson's Bay Company, and under the 14th section of that Act the rights and privileges of the Hudson's Bay Company are to remain in full force, virtue and effect. (Ont. Docts., pp. 6-7-10.)

So that in all these Acts they were making provision for the government, or at least for the judicial control of large territories claimed as belonging to the Crown of Great Britain, and which were not included in the Province of Upper Canada.*

The sixth clause of the British North America Act, 1867 (Imperial Act, 30th Vic., cap. 3), is as follows:

"The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec." (Ont. Docts., p. 11.)

And the 146th section of the same Act, under which Rupert's Land and the North-western Territory could be admitted into the Union, is as follows:—

"It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on addresses from the Houses of Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions, in each case, as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ont. Docts., p. 404.)

On the 17th December, 1876, the Senate and Commons of the Dominion of Canada adopted an address to the Queen, praying Her Majesty to unite Rupert's Land and the North-western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government. (Orders in Council, Dom. Stats., 1872, p. lxvi.)

In compliance with the terms of the above address, the Rupert's Land Act, 1868, (Imperial Act, 31 and 32 Vic., cap. 105), was passed, and under the second section of that Act the term "Rupert's Land" should include the whole of the lands and territories *held, or claimed to be held*, by the said Governor and Company.†

On the 19th November, 1869, the Hudson's Bay Company executed a deed of surrender to Her Majesty of Rupert's Land, which included the whole of the lands and territories held, or claimed to be held, by the Company, excepting the lands mentioned in the second and fifth paragraphs. Under the second paragraph, the Company might, within twelve months, select a block of land adjoining each of their stations. The schedule of the lands selected is attached to the surrender, and includes about 46,000 acres of land.

Under paragraph No. 5, "the Company may within fifty years after the surrender claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out."

---

*[The contention of Ontario is, that the "Indian territories" (outside the Provincial boundaries) to which the Acts applied were those drained by the waters which fall into the Arctic Ocean.—G. E. L.]

†[The enactment is, that "*For the purposes of this Act*, the term 'Rupert's Land' shall include," etc.—(See Book Arb. Docs., p. 405.) The object of the Act was to enable effect to be given to a contemplated arrangement by way of compromise, which was in negotiation between the Dominion and the Hudson's Bay Company.—G. E. L.]

(6) "For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south, by the United States boundary; on the west, by the Rocky Mountains; on the north, by the northern branch of the Saskatchewan; on the east, by Lake Winnipeg, the Lake of the Woods, and the waters connecting them." (Order in Council, Stats. of Can., 1872, p. lxxix.)

Such surrender was accepted by Her Majesty by an instrument under her sign manual, and signed on 22nd day of June, 1870.

On the 23rd June, 1870, Her Majesty, by an Order in Council, ordered that, after the 15th July, the said North-western Territory in Rupert's Land should be admitted and become part of the Dominion of Canada, on the Dominion paying to the Company £300,000, when Rupert's Land should be transferred to the Dominion of Canada, which transfer has been made and the consideration money paid. (Ont. Docts., pp. 405-6-7-8.)

On the very threshold of Confederation, Ontario knew the terms upon which Rupert's Land and the North-western Territory might be admitted into the Union; and during the negotiations that were pending between the Imperial authorities and the Dominion respecting the surrender by the Hudson's Bay Company of their lands and territories, rights and privileges, the Ontario Government never interfered or claimed that what was about being surrendered to Her Majesty for the purpose of admission into the Dominion had at any time formed a part of the Province of Upper Canada—although Ontario must be assumed to have known that the Hudson's Bay Company was, in 1857, claiming under its Charter that the southern boundary of the Company's territory was the height of land dividing the waters which flow into the Hudson's Bay from those emptying into the St. Lawrence and the Great Lakes, and that the western boundary was the base of the Rocky Mountains.

In thus lying by while the Dominion was purchasing this territory, and without forbidding the purchase or claiming any interest whatever in the rights and privileges about being acquired, that Province is now estopped from setting up that its western boundary extends beyond the meridian passing through the point of junction of the Ohio and Mississippi rivers north of the United States and south of the Hudson's Bay Territories.* All the remaining territory was "held, or claimed to be held, by the Governor and Company," and was, as such, paid for by the Dominion.† (*Gregg* v. *Wells*, 10 A. and E., 90.)

The acceptance by the Imperial Government of a surrender of what the Hudson's Bay Company claimed as territory belonging to them, was an admission that no portion of these territories were ever included in the Province of Upper Canada. The British Government being bound by this admission, surely Ontario must be.‡

In 1871 a Commissioner was appointed by each of the Governments of the Dominion and Province of Ontario for the settlement of the northerly and westerly boundaries of the Province.

The instructions given to the Commissioners on behalf of the Dominion were that—

"The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., ch. 83, known as the 'Quebec Act,' and is

* [But see the argument of the Attorney-General before the Arbitrators as to this point, *post*.—G. E. L.]

† [The territory lying west of the meridian of the junction of the Ohio and Mississippi, and to the south and east of the Height of Land, was never "held or claimed to be held" by the Hudson's Bay Company. And as to the purchase of the remaining territory by the Dominion, see the argument of the Attorney-General before the Arbitrators, *post*. See also the following passage, applicable to this point, in the letter of 8th February, 1869, from Sir George Cartier and the Hon. William McDougall to the Colonial Secretary: "It will be for Earl Granville to consider whether this Company is entitled to demand any payment whatever for surrendering to the Crown that which already belongs to it. We confess our utter inability, upon any principle of law, or justice, or public policy, with which we are acquainted, to estimate the amount which ought to be paid under such circumstances. The only basis of computation we can discover, applicable to such a case, is the *cost* of the legal proceedings necessary, if any be necessary, to recover possession. A person has taken possession of a part of your domain under the pretence that it is included in a deed which you gave him for some adjoining property before you purchased the domain. You want to get rid of him, but will be compelled to bring an action. He is artful, stubborn, wealthy and influential. He will be able to worry you with a tedious litigation. How many acres will you allow him to 'reserve,' and how much will you pay to save yourself the cost and trouble of a law suit?" (*Ante*, p. 162.)—G. E. L.]

‡ [But there was no such admission. (See the argument of the Attorney-General before the Arbitrators, *post*).—G. E. L.]

described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio '*westward to the banks of the Mississippi*' the description continues from thence (*i.e.*, the junction of the two rivers) '*and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*'

"Having determined the precise longitude, west of Greenwich, of the extreme point of land making the junction of the north and east banks respectively of the said river, you will proceed to ascertain and define the corresponding point of longitude or intersection of the meridian passing through the said junction with the international boundary between Canada and the United States.

"Looking, however, to the tracing enclosed, marked A, intending to illustrate these instructions, it is evident that such meridian would intersect the international boundary in Lake Superior.

"Presuming this to be the case, you will determine and locate the said meridian, the same being the westerly portion of the boundary in question, at such a point on the northerly shore of the said lake as may be nearest to the said international boundary, and from thence survey a line due south to deep water, making the same upon and across any and all points or islands which may intervene, and from the point on the main shore found, as aforesaid, draw and mark a line due north to the southern boundary of the Hudson's Bay Territory before mentioned. This will complete the survey of the westerly boundary line sought to be established.

"You will then proceed to trace out, survey and mark, eastwardly, the aforementioned *southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*

"This is well understood to be the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valleys of the Great Lakes, and forming the northern boundary of Ontario; and the same is to be traced and surveyed, following its various windings till you arrive at the angle therein between the Provinces of Ontario and Quebec, as the latter is at present bounded; having accomplished which, the same will have been completed."

The Privy Council of Ontario on receiving a copy of above instructions advise the Dominion "that the Province of Ontario claims that the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his commission. (Ont. Docts., pp. 340–1.)

The boundaries that Ontario was willing to accept are set forth in an Order in Council. (Ont. Docts., p. 243.)

Until the boundaries could be definitely adjusted, provisional boundaries were agreed upon on the 3rd of June, 1874, as follows:—On the west, the meridian line passing through the most easterly point of Hunter's Island, run south until it meets the boundary line between the United States and Canada, and north until it intersects the fifty-first parallel of latitude; and the said fifty-first parallel of latitude shall be the conventional boundary of the Province of Ontario on the north. (Ont. Docts., p. 347.)

SUPPLEMENT TO DOMINION CASE.*

(COPIED FROM DOCUMENTS FURNISHED BY THE FOREIGN OFFICE.)†

M. de Vaudreuil was Governor of La Nouvelle France in 1755.

General Wm. Shirley (as Mr. Shirley) was Captain-General and Commander-in-Chief of the Province of Massachusetts Bay in 1749, and in July of that year it was agreed that Commissaries should be appointed to define, in an amicable spirit, the boundaries between the colonial possessions of Great Britain and France in North America.

There is proof that Mr. Shirley was originally one of these Commissaries, and that Mr. Mildmay was the other; for on the 21st September, 1750, a mémoire, signed "W. Shirley" and "W. Mildmay," was presented to the French Commissaries, respecting the boundaries of Nova Scotia or Arcadia, under Art. 12 of the Treaty of Utrecht; and on the 11th of January, 1751, a second mémoire on the same subject was signed by "W. Shirley" and "Wm. Mildmay," as British Commissaries at Paris; but it is evident that Mr. Shirley had ceased to be a Commissary in April, 1755; for on the 23rd January, 1753, a further mémoire was presented by the British Commissaries to the French Commissaries respecting this same boundary; but instead of its bearing the signatures of Mr. Shirley and Mr. Mildmay, it was signed "Mildmay" and "Ruvigny de Cosne."

Mr. Shirley had therefore no doubt returned to America, and Mr. Ruvigny de Cosne, who was British Chargé d'Affaires at Paris, in the absence of the Earl of Albemarle, had succeeded him as one of the British Commissioners.

In May, 1755, the commission was still sitting at Paris.

On the 14th of May of that year, a mémoire was delivered by the French Ambassador in London (the Duke de Mirepoix) to the British Minister for Foreign Affairs, in which was laid down the following four points of discussion:

1. Limits of Arcadia.
2. Limits of Canada.
3. The course and territory of the Ohio.
4. The islands of St. Lucia, St. Vincent, Dominica and Tobago.

With regard to the limits of Canada the mémoire ran as follows:—

"The Court of France have decisively rejected, and will always reject, the proposition which has been made by England, that the southern bank of the River St. Lawrence and Lakes Ontario and Erie shall serve as boundaries between the two nations.

"It is necessary to establish as a base of negotiation relative to this Article, that the River St. Lawrence is the centre of Canada. This truth is justified by all titles, by all authors, and by possession. All that France will be able to admit, after having established this principle, which cannot be reasonably contradicted, is to examine, in regard to this object, whether the reciprocal convenience of the two nations can exact some particular arrangement thereto, in order to fix invariably the respective boundaries.

"The only pretext the English make use of to colour their pretensions is drawn from Article 15 of the Treaty of Utrecht; but in examining attentively all the expressions of that Article, it is evident that nothing is less founded than the inductions which the Court of London actually wish to draw from it.

"1. It is only a question in this Article of the person of the savages, and not at all of their country, or pretended territory, since they have no determined territory, and the only knowledge they have of property is the actual use they make of the land they occupy to-day, and which they will cease perhaps to occupy to-morrow.

"2. It would be absurd to pretend that everywhere where a savage, a friend or subject of one of the two Crowns, should make a passing residence, that country that he had dwelt in should belong to the Crown of which he might be the subject or the friend.

---

* Report, Committee Ho. of Com., Can., 1880, pp. 256-262.

† [This parenthetical statement is from the supplement to the Dominion case. The paper has the signature 'Edward Hertslet,' (see *post*, p. 303.)—G. E. L.]

"3. The savages in question are free and independent, and there are none that could be called subjects of one or the other Crown; the enunciation of the Treaty of Utrecht in this respect is incorrect, and cannot change the nature of things. It is certain that no Englishman would dare, without running the risk of being massacred, tell the Iroquois that they are subjects of England; these savage nations govern themselves, and are as much, and more, friends and allies of France than of England; several French families are even affiliated among the Iroquois, and have dwelt with them during the course of the last war, during which the five nations preserved the most exact neutrality.

"4. Article 15 of the Treaty of Utrecht contains the same stipulations, as much in favour of the French as in favour of the English, and these stipulations are mutual; the French could then sustain with a better title than the English pretend about the Iroquois, that the nations Abénaquises and Souriquoises, otherwise Micmacs, Malécites, Cannibas, etc., are subjects of France, and as there are some Souriquois who inhabit the extremity of the Peninsula of Cote, Cape Fourcher, and Cape Sable, it would follow that the French could pretend to form settlements there, with as much right as the English have formed them at Oswego, or Chouagen on the shores of Lake Ontario, in 1726 or 1727, and consequently long after the peace of Utrecht; France has not ceased since that time to complain of that enterprise, and she relies upon the Fort of Chouagen being destroyed.

"5. The Treaty of Utrecht has been ill interpreted in pretending that it would authorize the French and English to go and trade indiscriminately amongst all the savage nations, under pretext of subjection, alliance or friendship. This Article, well understood and well expounded, assures only the liberty of commerce which the savages can make among themselves, or with European nations, and does not at all authorize them to leave the confines of their colonies to go and trade with the savages.

"6. Finally, this Article 15 conveys that it shall be settled that the American nations shall be reputed subjects or friends of the two Crowns. This stipulation has not been executed, because, in fact, it is scarcely susceptible of execution, since such a savage nation, which to-day is friendly, to-morrow may become an enemy, and, consequently, the fixation which might have been appointed for it would be continually contradicted by fact.

"All that has just been exposed proves clearly that in discussing concerning the rules of the justice and right of Article 15 of the Treaty of Utrecht, it will be easy to destroy the false interpretations that have been given it; it will not be less easy to demonstrate that the English should not be determined by any motive of interest to put forward the pretensions they have formed; it is not a question in these vast regions of America, to dispute about a little more or a little less land. The essential interest is confined to two objects, that of security and that of commerce; and the Court of France will be always disposed to concert, in these two respects, with that of London, equitable and solid arrangements as well for the present as for the future."

On the 7th of June following, the British Government returned a reply to this mémoire, repeating Article by Article, and with reference to the limits of Canada, said:—

"It will be difficult to form a precise idea of what is called in the Memorial the centre of Canada, and still less can it be admitted as a base of negotiation that the River St. Lawrence is the centre of that Province; this is advanced without proof, and it is impossible that the course of a river of that length can form the centre of any country. Besides, Great Britain cannot grant that the country between the northern coast of the Bay of Fundy and the southern bank of the River St. Lawrence, which Great Britain has already offered to leave neutral, and not possessed by either of the two nations, in reserve for the borders that are proposed to be drawn for it, ought to be regarded or has ever been considered as a part of Canada, since the contrary has been demonstrated by authentic proofs. Neither can Great Britain admit that France has right to Lakes Ontario and Erie, and the Niagara River, and to the navigation of these waters exclusively, since it is evident, by incontestable facts, that the subjects of Great Britain and of France, as well as the Five Nations Iroquois, have indiscriminately made use of the navigation of these lakes and this river, according as occasions and convenience have

required; but as regards a piece situated on the south bank of the River St. Lawrence, exclusive of that already proposed to be left neutral, the boundaries of which are in dispute between the two nations or their respectieve colonies, the Court of Great Britain is ready to enter into a discussion in regard to this, and to fix the limits of it by an amicable negotiation, but without prejudice, nevertheless, to the rights and possessions of any of these five nations.

"With regard to the exposition that is made in the French Memorial, of the 15th Article of the Treaty of Utrecht, the Court of Great Britain does not conceive that it is authorized either by the words or the intention of that Article.

"1. The Court of Great Britain cannot admit that this Article only has regard to the person of the savages, and not their country; the words of that Treaty are clear and precise, viz.: The Five Nations or Cantons Indians are subject to the rule of Great Britain, which, by the accepted exposition of all treaties, must have reference to the country as well as to the person of the inhabitants; France has recognized this most solemnly; she has well weighed the importance of that avowal at the time of the signature of this Treaty, and Great Britain can never depart from it; the countries possessed by these Indians are very well known, and are not at all as indeterminate as is pretended in the Memorial; they possess and transfer them, as other proprietors do everywhere else.

"2. Great Britain has never pretended that the country in which a savage should make a passing residence would belong to the Crown whose subject or friend he might be.

"3. However free and independent the savages in question may be (which is a point which the Court of Great Britain does not at all wish to discuss), they can only be regarded as subjects of Great Britain, and treated as such by France in particular, since she has solemnly engaged herself by the Treaty of Utrecht, renewed and confirmed in the best form by that of Aix-la-Chapelle, to regard them as such; the nature of things is not changed by the Treaty of Utrecht. The same people, the same country, exist still; but the acknowledgment made by France of the subjection of the Iroquois to Great Britain is a perpetual proof of her right in this respect, which can never be disputed with her by France.

"4. It is true that the 20th Article of the Treaty of Utrecht contains the same stipulations in favour of the French as in favour of the English, with regard to such Indian nations as shall be deemed, after the conclusion of this Treaty, by Commissaries, to be subjects of Great Britain or of France; but as to what is mentioned of the five nations or Cantons Iroquois, France has distinctly and specifically declared by the said 15th Article that they are subjects of Great Britain, '*Magnæ Britanniæ imperio subjectæ*,' and consequently this is a point to be no more disputed about.

"5. In whatever manner one interprets the Treaty of Utrecht with respect to the trade which will be permitted the English and French to carry on indiscriminately with the savage nations, it is nevertheless very certain that such a general trade is by no means forbidden by this Treaty. It is an ordinary and natural right to transact business with one's own subjects, allies or friends; but to come in force into the territories belonging to the subjects or allies of another Crown, to build forts there, to deprive them of their territories and to appropriate them, is not and will not be authorized by any pretension, not even by the most uncertain of all, viz., convenience. However, such are the forts of Frederick, Niagara, Presqu'isle, Rivière-aux-bœufs, and all those that have been built on the Oyo and in the adjacent countries. Whatever pretext France can allege for regarding these countries as dependencies of Canada, it is certainly true that they have belonged to, and (inasmuch as they have not been ceded or transferred to the English) belong still to the same Indian nations that France has agreed, by the 20th Article of the Treaty of Utrecht, not to molest, '*Millo in posterum impedimento aut molestia afficiant.*'

"6. It has already been proved that France has, by the express words of the said Treaty, fully and absolutely recognized the Iroquois as subjects of Great Britain. It would not have been as difficult as is pretended in the Memorial to come to an agreement on the subjects of the other Indians, if, among the many Commissions which have emanated to settle this point, there had been a mutual disposition to come to a conclusion. The acts of these Commissions have sufficiently shown the true reasons which have prevented the

execution of the 15th Article of the Treaty of Utrecht, without recourse to an imaginary supposition, as if the Treaty was not capable of being executed; a supposition which is evidently destroyed by the Treaty itself with regard to the Iroquois nations."

On the 22nd of July, 1755, Monsieur de Mirepoix, the French Ambassador, left England by order of his Court, without taking leave; consequently, on the same day, Mr. de Cosne was instructed by His Britannic Majesty's Government to quit France immediately without taking leave, and to repair to England, which he did on the 25th, and arrived in England, with all his public papers, on the 31st of the same month.

Negotiations were accordingly suspended, and on the 17th of May, 1756, war was declared by Great Britain against France; followed, on the 9th of June, by a French ordonnance declaring war against England.

No further reports than those above described would appear to have been made to the Government by the English Commissaries between the 1st of April, 1755, and March, 1756.

The following is an account of what passed between the 26th March and 20th September, 1761:

On the 26th of March, 1761, the Duc de Choiseul, in the name of the King of France, addressed the King of Great Britain, through Mr. Pitt, a letter, communicating proposals as to the basis of negotiations for a separate peace between England and France, in addition to those pending to secure a general European peace.

On the 8th of April, the British reply was forwarded to the Duke, containing the views of the Court of St. James as to the proper basis to be established, in which willingness was expressed to receive an Envoy duly authorized to enter into negotiations. The result of this was, that M. de Bussy was appointed French Minister to London, and Mr. Hans Stanley was sent in a similar capacity from Great Britain to Paris; these diplomatists arriving at their respective posts early in June of the same year.

Negotiations were immediately set on foot for the conclusion of peace between France and England; but the chief difficulty in arriving at an amicable understanding consisted in the desire of the French to retain the fisheries at and near Cape Breton.

On the question of Canada, under date of the 17th June, the Duke de Choiseul had demanded that the boundary of Canada in that part of the Ohio which is regulated by the water-line, and so clearly defined by the Treaty under discussion, be so established, that there may not be any contestation between the two nations as to the said boundary.

On the 26th June, the above proposal of the Duc de Choiseul, as to the fixation of new limits to Canada towards the Ohio, was rejected by Great Britain on the grounds that it was "captious and insidious; thrown out in hopes, if agreed to, to shorten thereby the extent of Canada, and to lengthen the boundaries of Louisiana, and in the view to establish what must not be admitted, namely, that all that was not Canada was Louisiana, whereby all the intermediate nations and countries, the true barrier to each Province, would be given up to France."

The intentions of the Court of St. James were further fully set forth, as to Canada, in the following passage of the same letter:—

"First, then, the King will never depart from the total and entire cession, on the part of France, without new limits or any exception whatever, of all Canada and its dependencies."

On the 29th June Mr. Stanley reported that "the southern bounds of Canada were to be so settled as to give that Province entire and unmutilated to Great Britain, such as France, in short, held it in all respects;" and on the 1st July he stated that "it was agreed that Canada, as that Province was determined by their (French) geographers and historians, as well as by the respective civil and military Departments, should be ceded undismembered and entire to Great Britain."

In his despatch of the 14th July, 1761, Mr. Stanley forwarded a Mémoire containing proposals from the Duc de Choiseul, Art. 1 of which ran as follows:—

"1. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the

liberty of returning upon any pretence whatever against this cession or guaranty, and without interrupting the Crown of England in the entire possession of Canada."

It must, however, be remembered that other questions of great importance bearing on European interests were involved in these negotiations for peace ; and as difficulties were offered by France to the British proposals, on the 25th July Mr. Stanley was instructed to present an ultimatum from Great Britain, the first point of which related to Canada, and declared that "His Britannic Majesty would never depart from the total and entire cession on the part of France, without new limits, or any exception whatever, of all Canada and its dependencies."

The reply of France to this ultimatum was transmitted home in Mr. Stanley's despatch of the 4th August which contained the following clause with regard to Canada:

"The King consents to cede Canada to England in the most extensive form, as specified in the memorial of propositions."

Nevertheless, the replies of the French Government to the other demands were not deemed satisfactory, and Mr. Stanley, assuming that the Treaty had failed, stated in his despatch of the 6th August, that he was "convinced that the sole cause of the failure was the determined resistance of the French as to the entire concession of the fishery."

M. de Bussy was, as has been stated, at this time French Minister in London, and on the 18th August he furnished to Mr. Pitt a memo. upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

"On the limits of Louisiana.

"To fix the limits of Louisiana towards the English Colonies and Canada, a line should be drawn which will extend from Rio Perdido, between the Bay of Mobile and that of Pensacola, passing by Fort Toulouse in the Alibamons, and which, being prolonged by the western point of Lake Erie, will enclose the river of the Miamis, and by the eastern extremity of Lake Huron will go and meet the high lands on the side of Hudson's Bay towards the Lake of Abitibis, from whence the line will be continued from east to west up to and comprising Lake Superior."

Instructions, however, accompanied by an ultimatum, were transmitted under date the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to, and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken, was "the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis of Vaudreuil had surrendered to General Amherst, as Canada, and defined himself, with his own hand,* as comprehended in the government of that Province where he commanded:" and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil:

"Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor-General surrendered, by capitulation, the said Province to the British General, Chevalier Amherst, comprises, on one side, Lakes Huron, Michigan and Superior, and the said line, drawn from Lake Rouge, embraces by a tortuous course the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively, until its confluence into the Mississippi;" and on this definition of the limits of Canada, its cession was claimed; a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject.

Annexed hereto will be found a further copy of that map of M. de Vaudreuil, to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October, 1760, from which document also the following extracts have been taken:—

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil.*

"The above State is taken only from the part beginning above the Island of Montreal, with the Cedars and Vaudreuil on the north-west of the River St. Lawrence, and Chateau-

* [The correspondence (Mills' revised Report, pp. 51-4) shews that the Marquis de Vaudreuil traced no limits.—G. E. L.]

Gay on the south-east, and ends with Berthier on the north-west of the river, the Island of Dupas and Sorel on the south-east."

"The Government of Trois Rivieres joins that of Montreal with Maskenongy on the north-west, and Yamaska on the south-east, and ends with Ste. Anne on the north-west, and Ste. Pierre de Becquit on the south-east of the River St. Lawrence."

"The Government of Quebec begins with Grondines on the north-west and de Chaillon on the south-east, and takes in all the parishes from there down the River St. Lawrence."

It is further recorded on the 2nd September, the Marquis de Vaudreuial's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month, which runs as follows :

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France, in the description which your Memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction. He added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Britain, as it is there delineated."

The last Mémoire of France to England, in these negotiations, is dated 9th September, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

The 1st Article fully confirms the acceptance by France of the de Vaudreuil* map, and states as follows :—

"The King has declared in his first Memorial of propositions, and in his ultimatum, that he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty still persists in that offer, and without discussing the line of its limits marked on a map presented by Mr. Stanley,—as that line, on which England rests its demands, is without doubt the most extensive bound which can be given to the cession, —the King is willing to grant it."

On September 15th, in consequence of the non-acceptance by France of the terms offered by Great Britain, instructions were sent to the British Minister at Paris to demand his passports, and on the 21st a passport was sent to M. de Bussy, the French Envoy in London.

On the 20th, Mr. Stanley received his passport, together with an assurance that the King of France would be found at any time willing to re-open these negotiations, which were in effect resumed the following year ; for on the 29th August, 1762, the French King despatched the Duc de Nivernois to London to carry over the peace propositions ; and as a result, preliminary Articles of Peace were signed at Fontainebleau on the 3rd November, 1762.

From these is given the following extract :—

"His Majesty renounces all the pretensions that he had formerly formed, or could form, for New Scotland or Acadia, in all its parts, and guarantees it quite entire and with all its dependencies to the King of Great Britain. Besides, his very Christian Majesty cedes and guarantees to his said Britannic Majesty, in all its entirety, Canada, with all its dependencies, as well as the Island of Cape Breton and all the other islands in the Gulf and River St. Lawrence, without restriction, without his being free to come back upon this cession and guarantee, under any pretext, nor to trouble Great Britain in the aforementioned possessions."

EDWARD HERTSLET.

Foreign Office, April 27th, 1878.

* Yet, on the 30th November, weeks after the cessation of these negotiations, M. de Vaudreuil addressed a letter to the Duc de Choiseul, which was published, as stated in the Annual Register of 1761, "to quiet the minds of the people," and in which the Marquis stated that what he was charged with by the English as regards the limits of Canada was entirely false and groundless, and that nothing passed in writing on that head, nor was any line drawn on any map.—An. Reg., 1761, pp. 267, 268.

[This note is from the Supplement to the Dominion case.—G. E. L.]

REPORT OF PROCEEDINGS BEFORE THE ARBITRATORS IN THE MATTER OF THE BOUNDARIES OF THE PROVINCE OF ONTARIO, AT OTTAWA, 1st, 2nd, 3rd AUGUST, 1878.*

Arbitrators:

The Right Honourable Sir Edward Thornton,
The Honourable Sir Francis Hincks, and
The Honourable the Chief Justice of Ontario.

Counsel for Ontario:

The Hon. Oliver Mowat, A.G., Ont., and Mr. Thomas Hodgins, Q.C.

Counsel for the Dominion:

Mr. Hugh MacMahon, Q.C., and Mr. E. C. Monk.

Argument of the Attorney-General of Ontario.

The Hon. Oliver Mowat, Attorney-General of Ontario, opened the case for Ontario. He said:—I have embodied in the printed "Statement of the Case of the Province of Ontario"† the substance of the principal grounds on which I think that the Province is entitled to the bounds northerly and westerly which we claim. I have also, for facility of reference, had printed in a book, of which the arbitrators have copies, the statutes, documents, and other matter which seemed to bear on the subject, whether favourably or unfavourably to our claim. I do not mean to attempt now an exhaustive statement of all that is material, but purpose confining myself to stating some grounds which seem to me to be quite sufficient, and more than sufficient, to sustain our claim, although there are others of perhaps not less importance that might be dwelt upon. I do not mean even to answer at present all the points which have been set forth in the case for the Dominion; some of them I shall refer to, and if any of those not referred to seem to make any impression upon the arbitrators, I shall have an opportunity in my reply to remark upon them.

The 6th section of the British North America Act provides that that part of the Province of Canada "which formerly constituted the Province of Upper Canada, shall constitute the Province of Ontario;" the Province of Canada was by the Union Act of 1840 constituted of the Provinces of Upper and Lower Canada. The line of division between these Provinces had been settled in 1791 by an Order in Council, and extended in manner therein described to the "boundary line" of Hudson's Bay. By the same Order in Council, Upper Canada was to include "all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." All of the Province of Canada which lies west of the line of division belongs to Upper Canada, as all which lies east of the same division line belongs to the Province of Quebec. Ontario has the same limits as Upper Canada had, and the same limits as west of the division line the Province of Canada had, and as the Dominion of Canada had before its purchase of the rights of the Hudson's Bay Company. In 1870 the Dominion acquired these rights, as also the "North-Western Territory," in addition to the territory which the Province of Upper Canada and the Province of Canada had had. The question for the arbitrators is as to the westerly and northerly boundaries of the Province of Ontario, or of the Province of Upper Canada.

It will be convenient before entering upon the argument, to point out upon the produced map by Mr. Devine, the principal points which come in question in the discus-

* Printed by C. Blackett Robinson, Toronto, 1880. See also Report of Committee of the House of Commons, Can., 1880, pp. 262-291, 301-337.

† [To be found at p. 267, *ante*.—G. E. L.]

sion. This map has been prepared to assist the arbitrators in following the arguments addressed to them. It is in the main correct, although I have discovered two or three unimportant inaccuracies. On this map is marked the line of division between Upper and Lower Canada, which line runs northerly into Lake Temiscaming and thence due north to the boundary line or shore of Hudson's Bay. In regard to that line, I suppose there will be no dispute.

The westerly boundary of the Province, according to the present claim of the Dominion, has also been marked upon the map; it is a line drawn due north from the confluence of the Ohio and the Mississippi and in longitude about 89° 9½'. The provisional line of 1874 is the next on the map westward, but is not of any importance for our present purpose; it was found necessary, until the right boundary should be decided, that a line should be agreed upon provisionally, to the east of which the Province should make its grants of land, and to the west of which grants by the Dominion might be made. (Book of Documents, p. 347.) The next line westwardly is that running to the most north-western angle of the Lake of the Woods, near the Province of Manitoba; that point is very nearly in the meridian of Turtle Lake, and of Lake Itasca, both of which lakes have been regarded as sources of the Mississippi, and are very nearly in the same longitude.

Ontario claims that it is clear that its western boundary line is no farther east than the meridian of the most north-western angle of the Lake of the Woods, and that the only question on the western side of the Province is as to how much (if any) territory we are entitled to west of that meridian.

With regard to the northern boundary, we claim it to be certain that it is not south of the shore of James' Bay, or of the most north-westerly point of the Lake of the Woods; as to the exact extent of the Province to the north of those points there may be more difficulty. The statute of 1774, usually called the "Quebec Act," added a considerable territory to the Province of Quebec, and purported to give as the northern boundary of that Province, the territory granted to the Hudson's Bay Company; how far that territory extended has never been definitely ascertained. We have examined whatever documentary evidence there is which might throw light on this question, and we have also had a pretty exhaustive examination made of the various maps published before the present century. An analysis of the maps has been printed at p. 135 and on subsequent pages of the Book of Documents; and the produced map by Mr. Devine shows the principal lines. The most northerly is one which, in 1701, the Hudson's Bay Company unsuccessfully claimed for its southern boundary; and the next is the line they had asked for without success in the previous year, 1700. All of the other northerly lines marked on this map are at the westerly side placed to the north of the Lake of the Woods; most of them are several hundred miles to the north of that lake; while on the east they are south of James' Bay and of the point to which the Royal Commissions bring us there. None of these northerly lines has the authority of a treaty or a statute or an agreement. One line is marked on certain maps as "bounds of Hudson's Bay by the Treaty of Utrecht;" but that was a mistake of the geographers; it must be admitted that the bounds were not settled by the Treaty of Utrecht.

The claim of Ontario is precisely the same as had always been made for the Province before the Dominion of Canada purchased the rights of the Hudson's Bay Company. Controversies on the subject took place between the Hudson's Bay Company and the Province of Canada, and afterwards between that Company and the Dominion of Canada. During these controversies able papers were written wherein the claims of Canada were set forth; and I rely upon the arguments contained in these papers though not now repeating them all.

Opinions of some learned lawyers having been given in favour of the claim of the Hudson's Bay Company, these were controverted in the official papers on behalf of Canada; those opinions were given on inaccurate and partial representations of the facts; new evidence in favour of our claim has been obtained since; but upon the evidence collected before 1856, we have on our side the opinions of other eminent lawyers, and the opinion of the late Chief Justice Draper. The opinion of the Chief Justice was formed and communicated when he was in his prime; he was one of the ablest judges in Canada, and had

given great attention to this subject. He was sent to England by the Canadian Government to watch over the interests of the Province; he had access to private sources of information, some of which we have been able to reproduce now; and the opinion that he formed was arrived at upon a fuller knowledge of the facts than had existed on the part of any court or counsel who had theretofore given attention to the matter and whose opinions we are in possession of. The opinion was communicated to the Government here not expressed in controversy with an adversary; and it is very cautiously expressed; it does not go as far as the Province was claiming; he did not think the evidence sufficient to give a line to the Rocky Mountains (as the Province claimed), but expressed the opinion—his "confident hope"—that a decision by the Privy Council would give "to Canada a clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim, though not any territory west of the westernmost head of the Mississippi River," which is very near the Rocky Mountains. The opinion will be found at page 391 of our Book of Documents.

Sir Edward Thornton—The law officers of the Crown in England strongly recommended an appeal to the Privy Council, but that was not done. The writer of this extract seems to have expected that there would be a decision of the Privy Council, and I would like to know why the case was not referred.

Chief Justice Harrison—It was probably delayed by negotiations.

The Attorney-General—There were constant negotiations going on from that time, and the matter was one which, however clear the right might be thought to be, it was considered desirable to settle by compromise.

Sir Edward Thornton—But it was not compromised.

The Attorney-General—It was compromised twelve years afterwards. My learned friend, Mr. Hodgins, reminds me that one thing which prevented the reference was that the Government here thought the question ought to be referred by the British Government—that the Province ought not to have the responsibility of it; at all events the delay was only twelve years from this time—not a great while to be negotiating about a continent of territory.

Mr. MacMahon—I can answer further in regard to that. The Province of Canada refused to submit anything but the validity of the Charter of the Hudson's Bay Company to the Council; they refused to submit the question of the boundaries.

The Attorney-General—The adverse opinions were founded upon the Company's *ex parte* statements of the facts, and one of the allegations was that the Hudson's Bay Company had been always in possession of the territory. Now, it is a familiar principle with regard to old statutes or charters, that the interpretation of them is governed by the contemporaneous exposition they received, and by the acts of the parties under them. If the fact was, that, from 1670 to the time when these opinions were called for, there had been an actual possession by the Hudson's Bay Company of the whole territory which they claimed, there could be little question of their right to such territory. It would be absurd to suppose that, as a matter of law and legal construction, the Company could be deprived of property which they had for nearly two centuries "claimed and exercised dominion over" under their grants, as absolute and undisputed proprietors of the soil. But we deny that there was any such claim, dominion or possession, by the Company of the territory now in question, for more than a century after 1670; the principal ground upon which the opinions referred to must have proceeded was not in accordance with the facts. We have in our book the Company's statement. I refer to page 288:—"Under this grant the Company have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map; and they have also claimed and enjoyed the exclusive right of trading in those territories." The map referred to claims up to the height of land. No lawyer, upon that statement, could come to any other conclusion than did the law officers. In some of the earlier as well as the more recent of the legal opinions, express reference was made to the importance of knowing how much of this territory had been in possession of the Hudson's Bay Company, and it was stated in them that an old charter of this kind, especially an ambiguous one, should not be interpreted without reference to that fact.

No adverse legal opinion has been given on the facts that are now before the arbitrators. On the other hand, we have the opinion of a very distinguished judge, who was aware of all the material facts in favour of the Company's contention—although not of all the facts in favour of the Province,—and who gave that opinion after having been exclusively occupied several months with the subject. However, the arbitrators are not bound by that opinion. They will give whatever weight they may consider due to it; but they will consider for themselves whether the opinion was right or wrong.

On entering now upon some discussion of the evidence, I submit that, inasmuch as the Province of Ontario is now claiming what had always been claimed before by the Province of Canada, and by the Dominion of Canada likewise, I am entitled to ask the arbitrators to take that claim to be *prima facie* correct and well founded. The Dominion is one of the two parties to this controversy, and we put in evidence the official statements of the representatives of the Dominion repeatedly made; we show what position they took in regard to this question, what assertions they made, and what they claimed, up to the very last moment before becoming purchasers of the Hudson's Bay Company's rights I do not say this is conclusive, that it estops the Dominion from saying that their contention had been wrong, false or mistaken, but I do say that their demands before buying out the Company throw the burden on the Dominion of showing that in all those antecedent discussions and statements they had been wrong. I start with the strongest presumption in my favour when I show that before they made that purchase, the Dominion of Canada had taken the position which I now take, had made the assertions which I now make, had used many of the arguments which I now use, and had considered that those arguments were incapable of being answered. To take a single example, what did the Dominion Ministers say in their letter to the Colonial Minister on the 16th January, 1869? (Book of Documents, p. 324.) They expressly claimed "that the boundaries of Upper Canada on the north and west" included "all the territory to the westward and southward of the boundary line of Hudson's Bay to the utmost extent of the country commonly called or known by the name of Canada;" and that "Whatever doubt may exist as to the utmost extent of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between the Lake of the Woods and Red River."

But I shall show that, if I had no presumption in my favour, the conclusions which I desire the arbitrators to arrive at are the conclusions which they cannot but arrive at in view of all the facts.

In 1763 France ceded to England "Canada with all its dependencies," reserving only such part of what had been known as Canada as lay west of the Mississippi. The treaty will be found at page 18 of our Book of Documents. The watershed between the Missouri and the Mississippi rivers had been the boundary between Canada and Louisiana when both were owned by France, and by the treaty of 1763 the River Mississippi was agreed to as the future boundary between the English and French possessions in that quarter; the language of the treaty being, "that the confines between [France and England] in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source [etc.], to the sea." Very soon after this treaty, viz., on 7th October, 1763, the Province of Quebec was erected by Royal Proclamation, but the Province as then constituted took in very little of what was afterwards Upper Canada and what is now Ontario; the most north-westerly point was Lake Nipissing; the whole of the territory adjacent to the great lakes was excluded. In 1774 the boundaries of Quebec were enlarged by the Quebec Act. That Act recited that "by the arrangements made by the said Royal Proclamation a very large extent of territory, within which were several colonies and settlements of subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided that "all the territories, islands and countries in North America belonging to the Crown of Great Britain, bounded on the south by a line" therein described, from the Bay of Chaleurs to "the River Ohio, and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay," etc., "be, and they are

hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th October, 1763." What territory was embraced in this description? The Dominion contends now that the expression "northward to the southern boundary" of the Hudson's Bay Territory, meant a line drawn from the confluence of the two rivers due north, which would be in longitude about 89° 9½′ west; that the old Province of Quebec contained no territory west of that line; and that the Province of Upper Canada or the Province of Canada contained none. The only pretence for this argument is the word "northward" in this statute. Reasons as strong and indisputable as possible in favour of a more westerly boundary are afforded by the other language of the statute; by the surrounding circumstances; and by subsequent transactions.

Look first at the statute itself. It will be found at page 3 of the Book of Documents. The enactment is as follows:—"That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs," etc., "until it strike the River Ohio, and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson's Bay; and also all such territories, islands and countries, which have, since the 10th day of February, 1763, been made part of the Government of Newfoundland—be, and they are hereby, during His Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th day of October, 1763."

Now, in the first place, the word "northward" does not necessarily mean due north. In descriptions in the ordinary deeds and documents with which we are familiar, the word "northward" is constantly used as meaning any northerly direction—either due north, or towards the north-west or the north-east. Then in another part of the description a corresponding word is used in the sense in which I say this word "northward" should be used, for after the description brings the line to the River Ohio, it goes on thus: "along the river *westward* to the banks of the Mississippi." Here the word "westward" is used, not in the sense of due west, but of a line following the sinuosities of the River Ohio. Further, we have in the same description the expression "directly west." We have thus a word corresponding to "northward"—namely, "westward"—meaning not due west, but in a westerly direction; and we have the words "due west" and "right line" when Parliament meant due west and in a straight line. These considerations remove any presumption that Parliament when saying northward, must necessarily be taken to have meant due north. All the territories, islands and countries in North America belonging to the Crown of Great Britain, which was assigned in 1774 to the Province of Quebec, are bounded on the south by the line described, to the banks of the Mississippi; and what we say is that "northwards" meant the whole territory northward from the south line so described. The south line is given, and the statute describes what territory that south line is intended to include—all the territories belonging to Great Britain northward to the Hudson's Bay Company's territory.

The surrounding facts bearing on the question place the intention beyond doubt. First, observe that the recital declares the object of the Act to be, to give to the Province more extensive boundaries than it had by the Proclamation: "Whereas by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." Where were these colonies and settlements? There is no room for question that if you take the due north line as the westerly boundary, you do not include in the Province many of these French colonies and settlements. A large number of them, containing a large population, are given in Mr. Mill's book; and by looking at the produced map by Mr. Devine, the Arbitrators will see the number of forts which, with the populations in their neighbourhood, would be excluded. It is thus an historical fact, utterly beyond controversy, that a line due north from the confluence of the Ohio and Mississippi, would leave between that line and the Mississippi a large number of colonies and settlements for which it was intended by the

statute to provide civil government. Assume that the word "northward" is ambiguous, as certainly it does not necessarily mean due north, we remove all doubt by showing from the statute what the intention was, and by showing that that intention would not be carried out by a due north line.

Further, if I had not the recital in the statute ; if I did not know from history that there were colonies and settlements there, which the recital shows that it was intended to include ; if all I knew was that we had this ambiguous word, and that the British possessions at the time of the passing of the Act extended along the banks of the Mississippi to its source, that fact would afford sufficient ground for presuming that the word "northward" was intended to include whatever British possessions there were there.

"In the interpretation of statutes, the interpreter must, in order to understand the subject matter, and the scope and object of the enactment, call to his aid all those external and historical facts which are necessary for the purpose." (Maxwell on Statutes, pp. 20, 21.) It is presumed that the circumstances which led to the Act, the Bill introduced, and the proceedings of Parliament thereon, can be looked at for the purpose of the present controversy, as the discussions on the negotiations for a treaty are looked at to remove any doubt to which the language of the treaty might give rise. The proceedings in Parliament are printed at page 299 of the Book of Documents ; and the debate on the Bill shows that, as a matter of fact, the intention of the measure was understood on both sides of the House to be that the Mississippi, and no due north line, should be the western boundary. The Bill originated in the Lords, and the Bill, as it came down from that House, was clear as to the Mississippi being the western boundary. The Bill described the Province as "all the territories, etc., heretofore forming a part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the" Hudson's Bay Company. (Page 302.) Under that description the present question would not be arguable. There is no reference there to a due north line from the confluence of the Ohio and Mississippi; and it will not be argued that any territory there belonging to Great Britain was to be left without any government or without any provision made by the statute for its government.

The description was altered in the Commons. Why was it altered? Was it in order that the banks of the Mississippi should not be the western boundary? By no means; no member objected to that boundary. It appears beyond question from the debate, that all parties, those in favour of and those opposed to the Bill, concurred in regarding the western boundary as being properly the Mississippi River to its source (that being, as I have said, the boundary also between the possessions of France and England), and that the only reason for the change was the desire of Mr. Burke—who was at that time agent for the Province of New York—to settle the boundary between the Province of Quebec and the Province of New York. He thought that the Province of New York might suffer if the Crown was left to settle its boundaries, and he therefore wanted the statute to settle them ; but no proposal was made by him, or by anybody else, that the territory of the Province of Quebec should be less extensive towards the west. We have Mr. Burke's letter, written after the Act had passed, and in which he gives an account to his constituents of the Province of New York of what he had done for them. He points out what was wrong in the Bill as first introduced—namely, the difficulty as between the French Province of Quebec and the English Province of New York—in a region of country far away from the Mississippi ; and he tells what he did for the purpose of removing that difficulty. His letter is dated 2nd August, 1774, and is printed at page 384 of the Book of Documents. He told his constituents that he thought they "might be very much affected by" the clause as it stood in the Bill as it passed the Lords ; and explained "the conduct which (he) held in consequence of that view of (their) interests." He informed his clients that "the predominant and declared opinion" was, that "any growth of the [English] colonies which might make them grow out of the authority of this kingdom, ought to be accounted rather a morbid fulness than a sound and proper habit ;" that the prevailing habit was to restrain "the colonies from spreading into the back country ;" and "that the lines of the plan of policy . . . . . just mentioned were very dis-

tinguishable in the Bill as it came down to" the House of Commons, and that he had in consequence procured the alterations which had been made in the House of Commons. That "this was not (as it might be between two ancient British colonies) a mere question of geographical distinction, or of economical distribution, where the inhabitants on the one side of the line and the other lived under the same law and enjoyed the same privileges of Englishmen. But this was a boundary discriminating different principles of jurisdiction and legislation; where, in one part, the subject lived under law, and in the other under prerogative."

In the debate the great extent of this territory was objected to by Mr. Townsend, who said that the limits thereby assigned to Canada, and stated in the Bill to have been part of it, were greater than England and France had ever given to Canada. He was answered by Lord North as follows:—

"The first thing objected to by the honourable gentleman is the very great extent of territory given to the Province. Why, he asks, is it so extensive? There are added undoubtedly to it two countries which were not in the original limits of Canada as settled in the Proclamation of 1763—one the Labrador coast, the other the country westward of (to ?) the Ohio and Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada and the fishery upon that coast, who deem it absolutely necessary for the preservation of that fishery that the Labrador coast should no longer be considered as part of the Government of Newfoundland, but be annexed to that country. With respect to the other additions, these questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments, or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to these countries that there should be some government, my opinion is that, if the gentlemen will weigh the inconvenience of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate."

Attorney-General Thurlow said—"The honourable gentlemen are mistaken if they suppose that the bounds described embrace in point of fact any English settlement. I know of no English settlement embraced by it. I have heard a great deal of the commencement of English settlements; but as far as I have read they all lie upon the other side of the Ohio. I know at the same time that there have been, for nearly a century past, settlements in different parts of all this tract, especially in the southern parts of it and in the eastern (? western) bounded by the Ohio and Mississippi, but with regard to that part there have been different tracts of French settlements established. As far as they are inhabited by any but Indians, I take those settlements to have been altogether French; so that the objection certainly wants foundation."

Solicitor-General Wedderburn said—"It is one object of this measure that these persons (the English) should not settle in Canada."

Mr. Burke said—"In the first place, when I heard that this Bill was to be brought in on the principle that Parliament was to draw a line of circumvallation about our colonies, and to establish a siege of arbitrary power, by bringing round about Canada the control of other people different in manners, language and laws from those of the inhabitants of this colony, I thought it of the highest importance that we should endeavour to make this boundary as clear as possible. . . . The noble lord showed me the amendment, which by no means relieved my apprehensions. The reason why I feel so anxious is, that the line proposed is not a geographical distinction merely; it is not a line between New York and some other English settlement; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall

receive a more advantageous government upon the side of Connecticut, or whether you are restrained upon the side of New Jersey. In all these you will find English laws, English customs, English juries, and English assemblies wherever you go. But this is a line which is to separate a man from the rights of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the Province. The Crown has the power of carrying the greatest portion of the actually settled portion of the Province of New York into Canada. . . . . The Bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means either in the proposition originally in the Bill or in the amendment."

Lord Cavendish testifies in so many words that "the difference was whether the tract of country not inhabited should belong to New York or Quebec." The change made was by substituting a long clause drawn by Mr. Burke for the short description of the southern boundary which the Bill had contained. The following words of the Bill from the Lords, "extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi," were cancelled, and for this description the one substituted gave to the Province "all the territories, etc., in North America belonging to the Crown of Great Britain bounded on the south by the line [therein described] to the banks of the Mississippi,"—leaving untouched the remainder of the original description, which was and is as follows:—"and northward to the southern boundary of the territory granted to" the Hudson's Bay Company, which word "northward" clearly had not in the Bill meant a due north limitary line on the west (to its point of contact with the territory of the Hudson's Bay Company), but had meant northward from the whole described boundary line to the whole southerly boundary of the Hudson's Bay Company; and such southern boundary the Bill had constituted the northern boundary of the newly-created Province. It is thus perfectly clear that the western boundary was, as a matter of fact, intended to be the line of the Mississippi to its source; that as to this there was no difference of opinion.

Then let us look at the subsequent transactions. I have referred to the commissions issued by the Crown immediately after the passing of the Act, and which constitute an authoritative contemporaneous exposition of what the statute meant. In the first commission issued to the Governor-General of Canada after the passing of the Act, the boundaries of the new Province were described. The commission was to Sir Guy Carleton, and it described the line word for word as the Act had described it, to the confluence of the Ohio and Mississippi, and northward as in the Act, except that after the word northward the commission had these words, which are not in the Act, "*along the eastern bank* of the said river" (Mississippi) to (as in the Act) the southern boundary of the territory granted to the Hudson's Bay Company. Thus we have a royal commission issued shortly after the Act, defining the Province as it was the royal will that it should be bounded, and expressly declaring that the line should be along the eastern bank of the Mississippi; such commission having been prepared and issued on the advice of the very Ministers who were responsible for the statute and personally knew what it meant. That fact would possess great force, no matter who the Ministers were or who were their law advisers, and at this date must be held by any tribunal to free the question from the possibility of a doubt, on two grounds. First, because the commission is, as I have said, a conclusive contemporaneous exposition of what the statute meant; and, secondly, because the Crown had a right to add to the territory of the Province. If the statute did not give the territory to the banks of the Mississippi, the Crown had, by virtue of the royal prerogative, a right to add to the limits of the Province; and the commission in which territory up to and along the eastern bank of the Mississippi was given to the Province had the effect of giving to it that boundary, supposing that the statute had not given it.

Chief Justice Harrison—And providing the Crown had not given the territory to the Hudson's Bay Company already.

The Attorney-General—No; because the Crown had the right to place the territory in the Province, though it could be made to appear that the territory in some sense belonged to the Hudson's Bay Company; they were only private persons. If the Crown had chosen to put the whole of the Hudson's Bay Territory into the Province, the Crown had a right to do so. The present is not a question of property, but of government.

Chief Justice Harrison—That of course brings up the old question as to what right the Hudson's Bay Company did acquire.

The Attorney-General—I mean that the Hudson's Bay Company might have the fee, just as a private individual might have the fee in any portion of the territory of the Province; the Crown would not be interfering with their property by placing it under a certain government. That is all I am concerned about now. What I want to know is, how far our Province extends, and what territories are included under the government of the Province; the ownership of the soil may be a distinct question.

It is of some importance to know that the Law Officers of 1774 were men of great eminence. Lord Camden was the Lord Chancellor; Mr. Thurlow was the Attorney-General, and he afterwards became Lord Chancellor; the Solicitor-General was Mr. Wedderburn, and he also afterwards became Lord Chancellor. The Ministry had the highest legal assistance, and their acts on which I rely are of the highest value. They more certainly shew the intention than a mere exposition by a court, however able, whose members know nothing personally as to why an Act had been passed or what was meant by it; and a contemporaneous exposition by such a court would not be meddled with fifty years afterwards, not to speak of a hundred years afterwards.

The second commission to a Governor-General, after the passing of the Act, was to Sir Frederick Haldimand, and it defined the Province in the same way as the commission to Sir Guy Carleton had done.

I have said that the Crown had a right to include additional territory beyond that given by statute if the Crown thought proper. An illustration of this prerogative is afforded by this Act of 1774, which provides for additions to the Province of Quebec as theretofore given by the Proclamation. The Act provides that these additions, which Parliament itself was making, were to continue during His Majesty's pleasure only; although Parliament was making an addition, the prerogative in regard to even that territory was not interfered with; and *a fortiori* the prerogative right of giving still further territory to the Province was not intended to have been interfered with by the Act. As the statute provided that the additions thereby specified were to be during His Majesty's pleasure, if His Majesty's pleasure should interfere with that provision being carried out, it would so far be in effect a repeal of the Act, and would be a stronger exercise of the royal prerogative than a further addition to the territory provided by the statute would be.

The Constitutional Act of 1791 implies the same right of the Crown to exercise the royal prerogative in the arrangement of territorial limits. That Act was passed in contemplation of the division of the Province of Canada into the two Provinces of Upper and Lower Canada, and it made provision for the government of each of those Provinces. But the Act did not itself make the division; it provided that when the division was made, the government should be as the Act describes. This is the enactment: "His Majesty has been pleased to signify, by his message to both Houses of Parliament, his royal intention to divide the Province of Quebec into two separate Provinces," etc. It was to be done, if done at all, by the royal prerogative. His Majesty might divide the Province into two in any way he chose; and all that Parliament did by the Act of 1791 was to provide that, in case of such a division by the Crown, each of the two sections should be subject to the government which the statute provided for it.

Another illustration of such an exercise of the prerogative is in the proclamation of 1763, whereby the Crown created four new Provinces; Prince Edward Island, or St. John's Island, as it was sometimes called in those days, with the lesser islands, were added to Nova Scotia by the same prerogative.

Mr. Burke's letter to his constituents (printed in the Book of Documents) contains a reference to this matter—the paragraph is towards the foot of page 385. He says: "My next object of inquiry, therefore, was upon what principles the Board of Trade would, in the future discussions which must inevitably and speedily arise, determine what belonged to you and what to Canada. I was told that the settled uniform practice of the Board of Trade was this: that in questions of boundary, where the jurisdiction and soil in both the litigating Provinces belonged to the Crown, there was no rule but the King's will, and that he might allot as he pleased, to the one or the other. They said also

that under these circumstances, even where the King had actually adjudged a territory to one Province, he might afterwards change the boundary; or, if he thought fit, erect the parts into separate and new governments at his discretion. They alleged the example of Carolina: first one Province; then divided into two separate governments, and which afterwards had a third, that of Georgia, taken from the southern division of it. They urged, besides, the example of the neutral and conquered islands. These, after the Peace of Paris, were placed under one government. Since then they were totally separated, and had distinct governments and assemblies. Although I had the greatest reason to question the soundness of some of these principles, at least in the extent in which they were laid down, and whether the precedents alleged did fully justify them in that latitude, I certainly had no cause to doubt but that the matter would always be determined upon these maxims at the Board by which they were adopted." Mr. Burke did not approve of the extensive claims of the Crown in the matter of prerogative, as maintained by the Board of Trade; he thought the doctrine was carried too far; still, he admitted that it was the uniform settled practice of the distinguished persons who constituted the Board of Trade to act on that principle. I find nothing against that view; there seems to be no doubt that the Crown had the legal power stated, and that, if the Quebec Act did not give to the Province of Quebec as large a territory as the commissions of the Governors afterwards provided for, these commissions were sufficient to give the additional territory to the Province.

By the Treaty of 1783 (printed at page 19 of the Book of Documents) it was agreed between His Majesty and the United States of America that the boundary of the United States should be a line, therein particularly described, from the north-west angle of Nova Scotia, through Lakes Ontario, Erie, Huron, Superior, Long Lake, etc., to the Lake of the Woods, "thence through the said Lake (of the Woods) to the most north-western point thereof, and from thence on a due west course to the River Mississippi," etc. The effect of this was to transfer a further portion of what was formerly Canada, from Great Britain to the United States. It is in this Treaty that we have the first description referring to the Lake of the Woods. It is material to observe the language of the commissions to the Governors-General after this Treaty. The commission to Sir Guy Carleton three years afterwards, in giving the boundaries of the Province, followed this description of the Treaty, and assigned as the southerly boundary of the Province a line "to the said Lake of the Woods, thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the" Hudson's Bay Company. This was the first commission issued after the Treaty, and will be found at page 49 of the Book of Documents. It is to be observed that a due west line produced from the most north-western point of the Lake of the Woods would not strike what is now known as the Mississippi; and as we find that to be so, what is to be done? Various views have been suggested. One is that the line should go on until it reaches the first tributary of the Mississippi.

Chief Justice Harrison—What was the Mississippi as then understood? That is the first inquiry.

The Attorney-General—I have had that marked on the map. Mr. Dawson, the member for Algoma, has furnished me with an elaborate paper shewing what the Mississippi was as then understood. (Ont. Documents, 273–8.) On this part of the case, I rely on the arguments of Mr. Dawson, and of Mr. Mills in his book at page 67, without repeating them.

Chief Justice Harrison—They both treat it with great ability.

The Attorney-General—The matter is also discussed very ably in a paper by the Hon. Mr. Cauchon, Commissioner of Crown Lands, which has been printed at page 243 of the Book of Documents. If the Arbitrators fail to be satisfied with the reasoning of all these gentlemen, where is the line to go from that point? What alternative is there? When the difficulty on this point occurred between England and the United States, they agreed that the line should be drawn due north or south, as the case might be, to the line 49°. This was by the Treaty of 1818, which will be found on page 21 of the Book of Documents. I shall advert to this point again.

I have referred to the Constitutional Act of 1791, and have read the recital in that Act, to the effect that His Majesty had been pleased to signify his intention to divide the Province of Quebec. A paper was presented to Parliament before the passing of the Act, which described the line proposed to be drawn to divide the Province. (Docts., p. 411.) It traced the line of division into Lake Temiscaming, and thence "by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada." That was the description of Upper Canada as given in this paper, laid before Parliament when providing for the government of each of the two sections, and afterwards adopted by an Order in Council passed for the purpose of giving effect to the Act. In August, 1791, the Order in Council was passed, and it recited among other things that this paper had been presented to Parliament previous to the passing of the Act. It was therefore with the knowledge and concurrence of Parliament that the Crown adopted the line of division which I have spoken of, and gave to Upper Canada all of old Canada which was to the westward and southward of the line or lines mentioned in the Order. On 18th November of the same year, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a Proclamation in His Majesty's name, in pursuance of his instructions, declaring when the division should take effect; the Act having provided that the division should take effect upon a Royal Proclamation being issued, setting forth a day for that purpose. December 26th, 1791, was the date named in the Proclamation. The description of the Province is given in the recital:

"Whereas we have thought fit, by and with the advice of our Privy Council, by our Order in Council dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—'To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of Pointe au Bodet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east until it strikes the Ottawas River, to ascend the said river into the Lake Tomiscanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.'"

What "territory westward and southward" of the described lines was "commonly called or known by the name of Canada?" I have collected in the Book of Documents a vast amount of evidence on that point, which I will not trouble the Arbitrators with at present. There is no doubt that Canada included the whole of the territory now claimed by Ontario. If I find that my friends dispute that the name had this extensive signification, I shall give references to all sorts of documents which shew that Canada was as extensive as I state it to have been.

Sir Edward Thornton—Are you able to shew any acts of jurisdiction exercised by Canada in the disputed territory?

The Attorney-General—Yes, I shall come to that point directly, and shall shew continued and repeated acts of jurisdiction by the Province in the territory west of the line that the Dominion now contends for.

Before the Proclamation of General Clarke, the commission to Lord Dorchester, who was to be Governor-General, had been issued. It bears date 12th September, 1791, and recited the commission of April 22nd, 1786, to the same Governor-General (as Sir Guy Carleton), and the Order in Council of August, 1791, dividing "the said Province of Quebec" into two separate Provinces, by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shews that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada, for it is impossible to suppose that there

was an intention so soon to give to the Province narrower bounds than were indicated by the paper presented to Parliament, adopted afterwards by the King in Council, and than were defined by the Proclamation of Governor Clarke. Some change was required by strict accuracy of expression. By the Treaty of 1763, France had ceded to England "Canada and all its dependencies," but with a limitation: the watershed of the Mississippi and Missouri had been the boundary line between Canada and Louisiana, and by the treaty the part of Canada which was west of the Mississippi had been reserved to France; by the Treaty of 1783, a further part of Canada had been ceded to England by the United States. A description, therefore, in 1791 of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada" would not have been correct; and a form of expression was substituted which was free from this objection. There is not the slightest reason for thinking that there was any intention by the subsequent commissions—in referring to the old Province of Quebec—to limit the territory which was provided for by the paper to which I have referred, by the Order in Council, and by the commissions first issued. Quebec was evidently understood on all hands as embracing so much of Canada as still belonged to Great Britain.

The subsequent commissions to the Governors-General of Canada, up to and including that of Lord Gosford in 1835, and the Imperial commission to Mr. Caldwell as Receiver-General of Lower Canada, assigned the same line of division between Upper and Lower Canada. I point this out in order to shew that it was not an accident or a mistake which led to the line between Upper and Lower Canada being described as it was; it was evidently the deliberate purpose of the Crown to give that description. The commissions commence with the one issued in 1791 to give that line—the very first commission issued after the Act—and every commission from that time to 1838 assigned the same boundaries. In seven commissions, from that issued to the Earl of Durham, March 30th, 1838, to that to Lord Elgin, October 1st, 1846, and also in the two commissions to Sir John Colborne and the Right Hon. Charles Poulett Thomson, as Captains-General and Governors-in-Chief of Upper Canada, dated respectively December 13th, 1838, and September 6th, 1839, the line of division between Upper and Lower Canada is stated to reach the "shore" of Hudson's Bay: "by a line drawn due north from the head of the said lake (Temiscaming) until it strike the shore of Hudson's Bay." These seven commissions use the word "shore." It is not to be supposed that there was a mistake in substituting the word "shore" for the words "boundary line." The two expressions "boundary line of Hudson's Bay" and "shore of Hudson's Bay" evidently meant the same thing.

After Lord Elgin's, the commissions to the Governors-General did not contain any boundary-line descriptions. The other commissions to the Lieutenant-Governors of Upper Canada which have been examined, either do not give the boundaries of Upper Canada or give them partially only, and in such a manner as throws no light on the present question. So also the commissions after the union do not give the western boundary of the Province of Canada. The commissions to Sir John Colborne and Governor Thomson trace the western boundary into Lake Superior, and no farther, saying nothing of the line thence either westerly or northerly.

I was asked just now by Sir Edward Thornton whether acts of jurisdiction were ever exercised within the limits now claimed by the Dominion; and I propose now to answer this question. The first fact I may mention is, that Upper Canada has been in the habit of issuing writs into the territory west of the line 89° 9½′, since, at all events, 1818. We have been able to trace the practice back to that date. In 1850 the Province of Canada, with the sanction of the imperial authorities, entered into a treaty with the Indians, and procured the surrender of the rights of the Indians in the territory as far west as Pigeon River or the international boundary. This territory, it may be observed, is south of the height of land, and includes the territory between the line 89° 9½′ and the international boundary; this being territory which the Hudson's Bay Company never claimed, although the Dominion claims it now. The treaty is set forth in pages 22 to 24, Book of Documents. Mr. Robinson, who negotiated the treaty, seems, from the terms of it, to have been of the opinion that the height of land was our northern boun-

dary, but of course his opinion does not bind us. Another way in which jurisdiction has been exercised is this:—From the year 1853 the Province of Canada, continuously and without objection from any quarter, made grants of land in the Queen's name in this territory, west of the proposed line of the Dominion, and up to Pigeon River. Between 1853 and Confederation, no less a quantity than 35,059 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extending to Pigeon River. The dates and other particulars of all these grants are given in the Book of Documents, 322, 409. In 1868 the Government of the Dominion appropriated $20,000 towards the construction of a road from the Lake of the Woods to Fort Garry, on Red River; the money was expended accordingly.

Sir Edward Thornton—I think that was the money expended in time of great distress, and which led the Hudson's Bay Company to complain of intrusion on their territories.

The Attorney-General—And, on behalf of the Dominion, its Ministers, Sir George E. Cartier and the Hon. William McDougall, ably replied to the complaint, and showed that there was no ground for it. The correspondence will be found at page 323 of the Book of Documents.

So far as relates to Ontario's western boundary, it is unnecessary to consider the argument as to the Hudson's Bay Company owning this territory; because the extension of the southerly boundary to the west is not made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us, and the Crown had power to include within the limits of the Province part of the territory of the Company, as well as that of any private owner of land, if such was the royal will. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the treaty of cession—which seems now to be admitted on all hands—shows that the Company had no right to this territory, and adds strength to Ontario's claim, even in respect to the western boundary.

The only thing that I know of against all this mass of evidence are the decisions of a Lower Canadian Court in 1818, in the cases of De Reinhardt and McLellan, which have been cited in favour of the line drawn due north from the confluence of the Ohio and the Mississippi, and stated in the evidence in those cases to be 88° 50′ or 88° 58′. In each of those cases the question was whether the locality in which the murder was committed was in Upper Canada or not. The court was acting under a special statute and commission, which confined its authority to offences committed outside of Upper Canada; the prisoners wished to make out that the scene of the alleged murder was in Upper Canada, and that the court had therefore no jurisdiction. The court naturally leaned against what seemed a technical objection. The investigations and discussions of the last twenty-five years have thrown an immense amount of fresh light on the question; a good deal of the evidence on which I ask the Arbitrators to come to a different conclusion was not before the court; the court seemed also impressed with the erroneous idea that the word "northward," in the Act of 1774, necessarily meant due north, and the argument for another construction from other words in the statute was not presented by counsel, whose contention rather conceded that the Act of 1774 was against them, and they endeavoured to show that the Act of 1791 extended the boundaries; the court had before it the Proclamation of General Alured Clarke, but not the paper which had been submitted to Parliament in 1791, nor the series of commissions which had been issued, and which showed conclusively the intention of the Act and of the Crown; nor had the court its attention called, either to the historical facts referred to in the recital of the Quebec Act, or to the evidence of intention afforded by the debate on the Act and by Mr. Burke's letter. The court had nothing like the same materials for coming to a correct conclusion as the Arbitrators have; and, having reference to the materials before the Arbitrators, I submit it is quite clear that the conclusion of the court on the point now in question was wrong.

Chief Justice Harrison—Still, it was an important decision.

Sir Edward Thornton—It was a unanimous decision.

Mr. MacMahon—The then Chief Justice said that he had consulted his brother judges, and they were unanimously of opinion that that was the conclusion which ought to be reached.

Chief Justice Harrison—De Reinhardt, although convicted, was never executed.

The Attorney-General—No, he was not executed. I have endeavoured to get the despatch which directed that he should be released, but it cannot be found. There is no doubt that the man was not hanged, and no reason has been suggested for this except that the British Government, acting under the advice of the Crown lawyers in England, thought that the ruling of the court on the point in question here was not correct. (Docts., p. 226.) McLellan was acquitted.

In view of the whole evidence now before the Arbitrators it is apparent that if there is any difficulty on the westerly side of the Province, it is only as respects the territory west of Lake of the Woods. Is our western line further west than this lake? Does it extend to the first tributary of the Mississippi which a line due west from the most north-western point of the Lake of the Woods strikes? Or does our western limit extend to the Rocky Mountains?

I submit that the proper legal way of viewing the matter is, that inasmuch as the Royal Commissions declare that the line is to go due west to the Mississippi, some meaning must be given to that direction, and these words should be construed as referring to either the then supposed locality of the Mississippi, or the first stream the waters of which flow into the Mississippi, no matter by what name the stream may be called. There are various streams which fall into the Mississippi that a due west line would meet; these first fall into the Missouri and then into the Mississippi. We must find some meaning for the words employed; and as what is now called the Mississippi would not be touched by this due west line, we must find another meaning as near to the language used as possible.

I come now to consider the northern boundary, which so far I have only referred to incidentally. I have stated that the Quebec Act, and such of the Royal Commissions to the Governors previous to 1791 as mention the northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson's Bay Company; and the principal difficulty here is, that the southerly boundary of this territory was never definitely ascertained.

The claim of the Dominion is that the northern boundary of the Province is the height of land already described. I submit that it is clear that the height of land is not our northern boundary, and, on the contrary, is considerably south of our northern boundary. The first fact showing this is, that the easterly and westerly lines assigned to the Province by the Royal Commissions, cut through, and go north of, the height of land. This alone is conclusive on the point. The shore of Hudson's Bay to which our boundary goes on the east is far north of the height of land, and the Lake of the Woods, through which our boundary passes on to the west, is also north of the height of land to which the claim of the Dominion would limit us. It may be said also that the commission which was issued in 1791, and such of the subsequent commissions as mentioned the northerly boundary, declared in effect that the southerly boundary of the Company's territory was not south of those two points, namely, the south shore of James' Bay (called there Hudson's Bay) and the most north-western point of the Lake of the Woods.

The next point to which I ask the attention of the Arbitrators is, that so southerly a boundary as this height of land was not claimed or suggested by the Company as being within the intention of the charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of charter. The Company's papers and books have been thoroughly examined, and I do not think my learned friends will be able to show that for a century and a half after the date of the charter the Company claimed the height of land as their boundary. The English Commissioners, in their negotiations with France, made in one instance a proposal something like that, but made it of their own motion, without any authority from the English Government, and without any suggestion from the Company. That proposal will be found printed in the Book of Documents, at page 365, the last paragraph on that page. The language used is this: "The said Commissaries further demand that the subjects of His most Christian

Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay, under any pretext whatsoever; and that the stream and the entire navigation of the said rivers shall be left free to the Company of English merchants trading into Hudson's Bay, and to such Indians as shall wish to traffic with them." But even that proposal did not claim as the boundary the height of land; it claimed only that the rivers should be free, and that no forts should be built or settlements made upon them, because such would interfere with the freedom of the streams. The proposition had reference only to the rivers, not to the lands. There is no evidence that the land was in the minds of the Commissioners.

The point, however, which I am making is, that the Company themselves did not for one hundred and fifty years make that claim. They made their claim in different forms at different times. Upon the occasion of the Treaties of Ryswick in 1697 and Utrecht in 1713, the Company's claim was expressed either in the terms of the charter, or was simply to "the whole Bay and Straits of Hudson," and "to the sole trade thereof." It sufficiently appears from the early documents which emanated from the Company, that this general claim to the whole bay and straits was a claim to the waters and shores only, and to the exclusion of the French therefrom,—the French having been in possession of forts on the bay until after the Treaty of Utrecht, and the Treaty of Ryswick having in effect given them possession of all places on the bay except, it may be, Fort Bourbon. The Company's object was the trade of the bay, and not the occupation or settlement of the country away from the shores of the bay. The line which the Company itself proposed in 1700 was from the River Albany, on the one side, to Rupert River, on the other side of the bay; but the French rejected the proposal. In 1701 the Company proposed a still more northerly line, namely, from the River Albany on the one side to East Main River on the other; but the French rejected that one also. In 1711-12, the Company proposed a line to run from the Island of Grimington, or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the lake; and though the Company made a demand for the surrender of the forts on the shores of the bay, yet they do not appear to have made at that time any proposal as to a line on the west or south side of the bay, and their only claims and contests of this period were about the margin of the bay. In one instance or more they absurdly claimed the whole eastern coast to the Atlantic and the whole western coast to the Pacific; but the specific claim that they were entitled to the height of land, and to the territory along the various rivers which directly or indirectly flow into Hudson's Bay, was not made for one hundred and fifty years after the charter had been obtained.

The ground on which the Company's (and now the Dominion's) claim to the height of land is maintained is, an alleged rule that the discovery and possession of the shore of a new country give a right to the rivers and to the land adjoining. I do not admit that so-called rule. It is stated more strongly than the authorities warrant. My learned friends have in their case referred to Dr. Twiss's book on the Oregon Territory. That book was written by Dr. Twiss as a controversialist. It was published during the discussions on the question of the Oregon Territory, and published to help the English cause. But the view which was taken by Great Britain as to the alleged rule, appears from an extract which my learned friends have printed at page 6 of the Dominion case:—"Sir Francis Twiss, in his discussion on the Oregon question, at page 300, states that Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson—that is to say, upon her title by mere settlement, but upon her title by discovery, confirmed by settlements, in which the French nation, her only civilized neighbour, acquiesced, and which they subsequently recognized by treaty." So that it is only to the extent of the actual recognition of the English settlement by the French, subsequently made, that Dr. Twiss was of opinion that the rule had proceeded. At page 148 of the same book the author quotes Mr. Rush as asserting on behalf of the United States, "that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river, and its tributary streams." But Dr. Twiss

remarks that "Great Britain formally entered her dissent to such a claim, denying that such a principle or usage had been ever recognized amongst the nations of Europe;" and that "in the subsequent discussions of 1826-7 Great Britain considered it equally due to herself and to other powers to renew her protest against the doctrine of the United States."

Suppose, however, the modern rule to be as the Dominion contends; we are now interpreting an old charter, and we cannot interpret it by a new rule. The object is to find out what the intention at the time was; and we are not for that purpose to make use of modern rules not known and acted on at the time the charter was granted. I do not find any ground whatever for holding that the rule which my learned friends contend for was a recognized rule at that time, if there is any reason for maintaining its subsequent adoption and recognition.

Again, all international rules are founded on reason and necessity; it is because they are supposed to be just that the rules are recognized. If in some cases it may be just and reasonable that the possession of the coast should give a title to all the land watered by the rivers, back to the height of land, this cannot apply to a river 3,000 miles long. So far from being a matter of necessity or reason, it is absurd that the possession of a few miles of coast on Hudson's Bay should give the right to a river 3,000 miles long, and to half a continent of territory which that river happens to water. General rules respecting the rights of nations must be applied in a moderate and reasonable way, and not to cases to which the application cannot be defended on grounds of reason and justice. If such a rule exists as my learned friends contend for, there is no reason, justice or good sense in applying it to a case of this kind.

Further, possession as well as discovery is needed in order to give to a nation the rights for which my learned friends contend. The facts are, that the French, from the beginning of the seventeenth century, were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson's Bay, and were from time to time extending their explorations and settlements, as they had a right to do, to the head waters of the rivers flowing into Hudson's Bay, and to the interior of the country. They had various forts and settlements in the interior, and these settlements were not objected to by the English, nor could they have been. Supposing the rule to have been what the Dominion contends that it was, the fact of the French being in possession of the territory to the south of the rivers, and extending their territory from time to time, would bar the discoverers of the bay—if the Company were the discoverers—from saying that, by reason of the discovery, they could stop all further exploration in that direction. The rule, so far as it exists, is of effect only where the interior of the country can be reached only through the coast discovered and settled.

The case of the Dominion is based on the assertion that the English were the first discoverers of the bay, but it is impossible to say with certainty who were the first discoverers; nor was the alleged discovery by the English followed by possession. The voyage of Cabot, "grand pilot to Henry VII." (of England), into the bay, is said to have taken place in 1517; but no sort of possession of any part of the bay by the English before 1667 is pretended; being an interval of 150 years. It would be extraordinary to find a rule by which, after discovery being made and 150 years or more allowed to go by, the advantage of that discovery can then be claimed as giving title to half a continent. Gilham, a British subject, is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the bay; but in the meantime the bay had become known to the world. In the list of maps at p. 135 of the Book of Documents will be found a number of maps of dates antecedent to the charter, and shewing the bay; the country was well known to everybody when Gilham built his fort.

It is not material under the circumstances, but it is reasonably clear as a fact, that the bay was repeatedly visited by Frenchmen from the French settlements on the St. Lawrence between 1656 and 1663. I refer the Arbitrators to page 108 of the Book of Documents, the memoir of Sieur de Callières to the Marquis de Seignelay, the Foreign Minister of France. My learned friends dispute the truth of the statement in the memoir of Sieur de Callières, that Father Dablon and Sieur Couture visited Hudson's Bay in 1661 and 1663. M. de Callières is spoken of as a man of high character, and this

memoir was not written for the purpose of controversy, but was a confidential communication to the Minister in France, who was the official superior of the writer. M. de Callières was Governor of Montreal and afterwards of Canada. I apprehend it will be assumed at this late day that his statements were correct. He says:—

"As regards Hudson's Bay, the French settled there in 1656, by virtue of an *arrêt* of the Sovereign Council of Quebec, authorizing Sieur Bourdon, its Attorney-General, to make the discovery thereof, who went to the north of said Bay, and took possession thereof in His Majesty's name. In 1661, Father Dablon, a Jesuit, was ordered by Sieur d'Argenson, at the time Governor of Canada, to proceed to said country. He went thither accordingly, and the Indians, who then came from thence to Quebec, declared they had never seen any European there. In 1663, Sieur d'Avaugour, Governor of Canada, sent Sieur Couture, Seneschal of the Côte de Beaupré, to the north of the said Hudson's Bay, in company with a number of Indians of that country, with whom he went to take possession thereof, and he set up the King's Arms there. In the same year, 1663, Sieur Duquet, King's Attorney to the *Prevôte* of Quebec, and Jean l'Anglois, a Canadian colonist, went thither again by order of the said Sieur d'Argenson, and renewed the act of taking possession by setting up His Majesty's Arms there a second time. This is proved by the *arrêt* of the said Sovereign Council of Quebec, and by the orders in writing of said Sieurs d'Argenson and d'Avaugour." There is a detailed account, of which the Governor of the Province is sending a confidential communication.

I refer also to the statements of M. de Denonville, Governor-General of Canada, to the Foreign Minister. They will be found at page 111 of the Book of Documents. M. de Denonville says:—"On the 29th of April, 1627, a new (company) was organized, to which the King (Louis XIII.) conceded the entire country of New France, called Canada, in latitude from Florida, which His Majesty's royal predecessors had had settled, keeping along the sea coasts as far as the Arctic Circle, and in longitude from the Island of Newfoundland westward to the great lake called the Fresh Sea, and beyond, both along the coasts and into the interior. Since that time, the French have continued their commerce within the countries of the said grant. In 1656, Jean Bourdon ran along the entire coast of Labrador with a vessel of thirty tons, entered and took possession of the North Bay. This is proved by an extract of the ancient register of the Council of New France on the 26th of August of the said year. In 1661, the Indians of said North Bay came expressly to Quebec to confirm the good understanding that existed with the French, and to ask for a missionary. Father Dablon went overland thither with Sieur de laVallière and others. Father Dablon has given his certificate of the fact. In 1663 those Indians returned to Quebec to demand other Frenchmen. Sieur d'Avaugour, then Governor, sent Sieur Couture thither with five others. Said Sieur Couture took possession anew of the head (fonds) of said Bay, whither he went overland, and there set up the King's Arms engraved on copper. This is proved by Sieur d'Avaugour's order of May 20th, 1663, and the certificates of those who were sent there." These also are statements made confidentially by a man of high character, who ought to know, to his official superior in France.

I find the following on this subject at page 3 of the Dominion Case:—"It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a discovery thereof. There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record, however, of his having made the attempt in the year following (1657), and he may then have designed carrying out the order. He sailed on the 2nd day of May and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. (Journal des Jesuites, pp. 209-218.)" Of course he could not; but then a man may make voyages in different years. It is not to be assumed that he did not make a voyage the year before because he made a partial voyage in this year, since we have positive testimony that he had also made that previous voyage. If these Governors were making false statements to their superiors in France, they would have referred to 1657; but they referred to 1656, showing that the reference was to a different transaction altogether. It is true there is no entry in the Jesuits' book of this voyage of 1656,

but that book is silent in regard to many things which no doubt did occur; and the mere fact of its not mentioning a voyage is no sort of evidence that the voyage did not take place. The printed case for the Dominion comments also on what is said in reference to Father Dablon. It does not appear whether there were two priests of that name or only one. At all events, the mere fact that the journeys which we prove to have been made by a priest of that name were not recorded by the Jesuits is no evidence against the direct authority that we have for the fact. On the whole, there seems to be no reason which would justify us in now doubting that persons acting under the authority of the French Government had repeatedly visited Hudson's Bay in and before 1663; had taken possession in the French King's name, and set up the Royal Arms there.

And, however that may be, the French had certainly before that date established posts at convenient points for trade with the Indians, and had secured the whole trade with the Indians around the Bay. In 1627, long before the date of the Hudson's Bay Charter, the King of France gave to the Company of New France the right of trade to an extensive territory—including Hudson's Bay—both along the coasts and into the interior; those words being inserted in the Charter. The French were enjoying the whole trade with the Indians around the Bay at the time the Charter to the Hudson's Bay Company was given. It is said in the books that for the purpose of giving property in a country, the possession needed is a possession having relation to the nature of the country. This was not an agricultural country; settlement for the purpose of agriculture was not expected; all that either party wanted was the trade with the Indians; the French had secured that, and had been in the enjoyment of it long before the Hudson's Bay Company obtained their Charter, and this was sufficient to prevent their rights from being interfered with by the subsequent possession of the coast by the English, after they had allowed one hundred and fifty years to pass without acting on the discovery which they are said to have made.

In the Dominion case, stress is laid on the fact that, by the Treaty of Utrecht (1713), the whole Bay and Straits were ceded or restored to England by France. But it was never intended by either party that so extensive a claim as is now made should be made under any language employed in that Treaty. In the memorial concerted with the Marquis de Torcy, January 19th, 1713, and forwarded to Lord Bolingbroke by the Duke of Shrewsbury (Book of Documents, page 153), it is stated:—"The inhabitants of Hudson's Bay, subjects of the Queen of Great Britain, who have been dispossessed of their lands by France in time of peace, shall be entirely and immediately after the ratification of the Treaty, restored to the possession of their said lands; and such proprietors shall also have a just and reasonable satisfaction for the losses they have suffered, with respect to their goods, movables and effects; which losses shall be settled by the judgment of commissaries, to be named for this purpose, and sworn to do justice to the parties interested." And Mr. Prior writes to Lord Bolingbroke on January 8th of the same year (Book of Documents, p. 153):—"As to the limits of Hudson's Bay, and what the ministry here seem to apprehend, at least in virtue of the general expression, *tout ce que l'Angleterre a jamais possedé de ce côté là* (which they assert to be wholly new, and which I think is really so, since our plenipotentiaries make no mention of it), may give us occasion to encroach at any time upon their dominions in Canada. I have answered, that since, according to the *carte* which came from our plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determine that difference must be guided by the same *carte*, I thought the article would admit no dispute. In case it be either determined immediately by the plenipotentiaries or referred to commissioners, I take leave to add to your Lordship that these limitations are not otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is a matter rather of industry than dominion. If there be any real difference between *restitution* and *cession*, *queritur?*"

It is plain, therefore, that the Treaty was not intended to authorzie so large a claim by England against France as the Dominion case contends. We know pretty well what, for the sake of peace, the French were willing to give up—namely, the territory to one or the other of the lines marked on DeLisle's maps, and marked as such on our map—and

what I have just read shows that there was not a great difference between what England demanded and what France was willing to give; and it is manifest that would not have been the case if there was anything like what is now demanded.

The testimony, therefore, appears to be abundant that the height of land boundary was what the English had no right to claim. Assuming that to be so, the question is,—What line north of the height of land is to be regarded as the Company's southern boundary?

The language of the Charter, by reason of its ambiguity, affords no assistance in this inquiry. The validity of the Charter has always been questioned on the ground of its ambiguity, as well as for other reasons. Assuming that the northern boundary is on one side the shore of Hudson's Bay, say beetwen 51° and 52° of latitude, and on the other at least as far north as the most north-western point of the Lake of the Woods, say latitude 49° 23′ 55″; if these points were clearly in the Hudson's Bay Territory, the northern boundary would perhaps be a line drawn from one of these points to the other. We claim that our boundary is farther north than this, but cannot be south of it. Are these points in what was the territory of the Company? And is the Provincial boundary no farther north? If by reason of the Charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void, it must, as regards its construction and operation, on well-known and well-settled principles, be interpreted most strongly against the Company, and in favour of the Crown. The object of giving the Charter, as the Charter itself declares, was to encourage discoveries by the Company; and the validity or operation of the instrument is to the extent only of giving (so far as the Crown could give) to the Company whatever of unknown territory the Company, within a moderate and reasonable time should occupy; and all that the Company could be entitled to was what the Company had, in this manner, acquired for themselves and for the Crown previous to the cession of Canada in 1763 by France to England; or what, previous to that time, the Company had been in possession or enjoyment of as their own with the concurrence of the Crown.

It is a familiar rule that Crown Grants are construed most favourably to the Crown, the grantor. The rule is thus stated in Chitty on Prero. page 391: "In ordinary cases between subject and subject, the principle is that the grant shall be construed if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security. But in the case of the king, whose grants chiefly flow from his royal bounty and grace, the rule is otherwise; and Crown grants have at all times been construed most favourably for the king where a fair doubt exists as to the real meaning of the instrument, as well in the instance of grants from His Majesty as in the case of transfers to him." The rule is not new but was in existence at the time of this Charter and before, and was, perhaps, more stringently acted upon then than it is in the case of modern deeds. Independently of this consideration, legal opinions are uniform that, in the case of an old and ambiguous charter like this, the instrument operates as far as possession and enjoyment have been had under it, and no further. I may cite some decided cases bearing on this point. Blankley *vs.* Winstanley, 3 Term Reports, 288, is one of them. In that case it was observed by one of the learned judges as follows:—"With regard to the usage: usage consistent with the meaning of the Charter has prevailed for one hundred and ninety years past, and if the words of the Charter were more disputable than they are, I think that ought to govern this case. There are cases in which this Court has held that a settled usage would go a great way to control the words of a charter. Such was the case of Gape *vs.* Handley, in which the Court went much further than is necessary in the present case; and it is for the sake of quieting corporations that this Court has always upheld long usage where it was possible, though recent usage would not perhaps have much weight." So in Wadley *vs.* Bayliss, 5 Taunt., 753, the case of an award under the Inclosure Acts, it was laid down that "the language of the award being ambiguous, it was competent to go into evidence of the enjoyment had, in order to see what was the meaning of those who worded it."

The rule is thus applied by Sir Arthur Pigott, Mr. Spankie, and Mr. Brougham, in the opinion printed at page 198 of the Book of Documents:—"In such a long tract of

time as nearly one hundred and fifty years now elapsed since the grant of the Charter, it must now be, and must indeed long since have been, fully ascertained by the actual occupation of the Hudson's Bay Company, what portion or portions of lands and territories in the vicinity, and on the coasts and confines of the waters mentioned and described as within the Straits, they have found necessary for their purposes, and for forts, factories, towns, villages, settlements or such other establishments in such vicinity, and on such coasts and confines, as pertain and belong to a Company instituted for the purposes mentioned in their Charter; and necessary, useful or convenient to them within the prescribed limits for the prosecution of those purposes."

In 1857 the Crown Lawyers pointed out (page 202) that the question of the validity and construction of the Company's Charter cannot be considered apart from the enjoyment that had been had under it. "Nothing could be more unjust than to treat this Charter as a thing of yesterday, and upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." They likewise say:—"The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this Charter, where the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by usage and enjoyment." There is no authority or opinion against that.

Again, the Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; it is preposterous to suppose that the Charter intended to grant, and did effectually grant to the Company, as against the world, all the territory southerly and westerly of the Bay, to the then unknown height of land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the Charter was intended to give, and did give to the Company, the right to shut up this enormous territory from the Crown and from all British subjects —and from other nations also—for all time; that if the Company should do nothing to discover, settle or acquire it for a hundred years or more, nobody else could; and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by the employment of the resources of the whole empire, in Europe as well as America—accrued, when so acquired, and was intended to accrue, to the Company for their own private benefit. Such a claim cannot be in accordance with a sound interpretation of any authorities which can be found.

It is clear, and indeed has been repeatedly admitted by the Company themselves, that until long after the date of the cession, the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant. Henley House was one of these factories, on the Albany, erected in 1744; and France had at the same time forts on the same river. At all events, with these exceptions, no possession of any part of the territory away from the shore was had by the Company until long after the cession.

I have said that the Company have admitted that to be so. A Committee of the British House of Commons was appointed in 1749 to inquire into the state and condition of the countries adjoining Hudson's Bay, and of the trade carried on there; and evidence was given before this committee that, at that time, the only forts and settlements of the Company were on the Bay. (Book of Documents, 395.) Those opposed to the Company at that time were complaining of this, and urging that the Company had not attempted to settle the country.

Again, in a statement of the Hudson's Bay Company, the material part of which is printed in the Book of Documents, page 402, there is this admission: "As long as Canada was held by the French the opposition of wandering traders (*Coureurs des Bois*) was insufficient to induce the Company to give up their usual method of trading. Their servants waited at the forts built on the coast of the bay, and there bought by barter the furs which the Indians brought from the interior. But after the cession of Canada to Great Britain in 1763, British traders, following in the track of the French, penetrated into the countries lying to the north-west of the Company's territories, and by there building factories, brought the market for furs nearer to the Indian seller." That means

British traders unconnected with the Company. "The Company, finding their trade seriously affected, extended the field of their operations, and sent parties to establish themselves in the interior." I need for my purpose nothing more than this statement by the Company themselves. It is an express admission that the French did settle in the territories referred to; that the Hudson's Bay Company confined themselves to the forts on the Bay; and that after the Treaty of 1763, British traders unconnected with the Company commenced to move; that they were first to move; and that it was not until the Company found their trade seriously affected by the acts of these other traders that the Company extended their operations.

Then at page 412, Book of Documents, there is a letter from Mr. Goschen, then chairman of the Company, telling the result of his researches into the books and papers of the Company. Amongst other things he says: "At the time of the passing of the Quebec Act, 1774, the Company had not extended their posts and operations far from the shores of Hudson's Bay. Journals of the following trading stations have been preserved bearing that date, namely, Albany, Henley, Moose, East Main, York, Severn, and Churchill." The solicitors employed by the Dominion to search the records of the Hudson's Bay Company, wrote as follows (see page 414, Book of Documents):—"From a perusal of the Company's Journals, we find that it was not the practice of the Company's servants to go up country to purchase peltry from the Indians; but the Indians came down to York and other forts on the Bay and there exchanged their furs, etc., for the Company's merchandise." So that the Company not only did not establish stations, but did not go up the country. "It appears that the peddlers (French traders—*Coureurs des Bois*, as they were called), from Quebec, had, for some time prior to the year 1773, gone up into the Red River district, and by so doing had cut off the Indians and bought their furs." Sir John Rose says (his statement is at page 414 of the same book): "I may mention that I do not think that any further research would have thrown more light on the matter than the Ontario Government is already in possession of. I employed a gentleman for several weeks to search at the Colonial Office and Foreign Office, as well as the Rolls' Office and Hudson's Bay Archives, and every scrap of information bearing on it was, I think, sent out either to Mr. Campbell or to Mr. Scott [Dominion Ministers] some months ago. I believe that any further search would be attended with no result." Thus, during the whole period from 1670 to the passing of the Quebec Act, the Hudson's Bay Company had been in no sort of possession of more than their forts and factories on and in the immediate neighbourhood of the Bay.

The Dominion Ministers truly affirmed in 1869, that "the evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt,' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg until many years after the cession of Canada to England." The Company's first post—viz., Cumberland House, on Sturgeon Lake—in the vicinity of the region in question—was not built until 1774, and they did not establish any post within this tract of country before 1790.

There has been printed in the Book of Documents, 230, the judgment of the Hon. Mr. Justice Monk, of Lower Canada, in a case of Connolly *vs.* Woolrich, and the substance of it is this:—He shows, in regard to the French, that as early as 1605, Quebec had been established and had become an important settlement; that before 1630 the Beaver and several other companies had been organized at Quebec for carrying on the fur trade in the west, near and around the great lakes and in the North-West Territory; that the enterprise and trading operations of these French companies, and of the French colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended their hunting and trading operations to the Athabasca country (say 58° north latitude and 111° west longitude); that some portions of the Athabasca country had, before 1640, been visited and traded in, and to

some extent occupied by the French traders in Canada and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements had considerably increased in number and importance; that Athabasca and other regions bordering upon it belonged to the Crown of France, at that time, to the same extent, and by the same means, as the country around Hudson's Bay belonged to England, viz., by discovery, and by trading and hunting. Judge Monk mentions 1670, because it was the date of the Charter of the Hudson's Bay Company. These were the conclusion to which Judge Monk came judicially.

It may be added, that if the Athabasca country belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson's Bay on the east, and between the Athabasca country and the St. Lawrence on the south, because with these parts the French were more familiar, and traded to a much larger extent than farther north. Between 1670 (the last date named by Judge Monk) and 1763, the French established posts or forts in that North-West Territory which they had previously explored, and hunted over, and traded with, namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River aux Biches, and the Saskatchewan, and so west to the Rocky Mountains, where Fort la Jonquière was established by St. Pierre in 1752. All these lakes and rivers are connected by the Nelson River with Hudson's Bay, and are in the territory which, in the following century, the Hudson's Bay Company claimed under their Charter; but confessedly they had constructed in it no post or settlement of any kind until long after 1763.

The subjects of France had also, on the northerly side of the dividing line, Fort Abbitibi, which was north of the height of land, and was built in 1686. It was situate at a considerable distance north of the height of land, and upon the lake of the same name, from which the River Monsippy flows into Hudson's Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up on the same river Fort La Maune, established about the same period; and, to the east, Fort Nemiscau, on the lake of that name, situate on the River Rupert, midway between Lake Mistassin and the Bay; this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another fort on the Albany, being that mentioned in one of the memorials of the Company as having been built in 1715. The facts enumerated form another conclusive ground against such a claim as is now set up by the Dominion as purchasers from the Company.

The matter is made clear in another way; that is, by the maps which the Company has furnished for the purposes of the present arbitration. We applied to them for what maps they had, and they furnished seven, only two of which seem to be of importance. One of the two, dated 1748, bears the Royal Arms and the Arms of the Company, and seems to have been prepared by the Company in view of the Parliamentary inquiry of that period, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the height of land, even as shown on this map; for the line is therein made to cut Frenchman's River, and several other rivers shown on the map as flowing into Hudson's Bay. The Company does not by the map claim to the height of land even so far as these comparatively small rivers are concerned. Their southerly line on the map runs to the eastern shore of a lake called Nimigon, thence to and northerly along the easterly shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound in Baffin's Bay. I am entitled to say that this map demonstrates that the Company, in 1748, did not claim to the height of land, even as the height of land was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the author, February, 1755. This copy appears to have been much used and worn; I suppose, therefore, that it is the map to which the Company chiefly referred when they had occasion to examine any map of their territory. There is on it an irregular line marked "Bounds of Hudson's Bay by the Treaty of Utrecht," and the colouring on the two sides of that line is different. This line may therefore be taken as showing the

extent of the Company's claim in 1755 and long after. Can there be any doubt that this is a fair conclusion to draw? On what principle can it be said that this map, which has been in the possession of the Company for over a century, should not be taken as showing, not what the bounds were, but what the Company regarded as their bounds? The line is about one-third of a degree north of the Lake of the Woods, and extends to the limit of the map in that direction, being in about the 98th degree of longitude.

Chief Justice Harrison—The height of land does not appear to have been known at the time the first of these two maps was prepared.

The Attorney-General—But these rivers are marked on the map, and the territory marked as the Company's does not extend to the sources of them.

Chief Justice Harrison—Those rivers are undoubtedly to the north of the height of land.

The Attorney-General—In regard to the territory which the Company knew when these maps were prepared, they did not claim to the height of land. On this map of Mitchell's the Company claimed a more southerly boundary than in the other map, but even in this map the line they claimed cut some rivers which flow into Hudson's Bay, instead of extending to their sources. The claim to go to the sources of the rivers is inconsistent with both maps, although the Company claimed larger bounds by the one than by the other. The Lake of the Woods is marked, and the line they claim by the map is north of the Lake of the Woods.

Chief Justice Harrison—There does not appear to be an interval of more than seven years between these two maps. The height of land is marked in some places upon Mitchell's map.

The Attorney-General—Yes; but the map throughout negatives the idea that the Company then claimed to the height of land. After the Treaty of Utrecht (1713), which gave to the British all lands, etc., "on the Bay and Straits, and which belong thereto," the Company, on the 4th August, 1714, proposed, for the first time, that the Mistassin line should go as far south-westerly as 49° "north latitude . . . and that that latitude be the limit;" as to how far to the west this line of 49° was to be followed nothing was then said. In 1719 and 1750 the Company proposed the line of 49° generally, but both times the proposition was rejected by the French. This line would have given to the Company a boundary greatly more limited than the boundary of the height of land, which began to be claimed nearly three-quarters of a centnry later.

It has already been said that the Company could not take advantage of their Charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763. The practical result would be nearly the same if this right should be deemed to have ceased at a somewhat later date, viz., the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783, for the Company made no further settlement between 1763 and 1783, except Cumberland House; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill system. Both the Act of 1774 and the Treaty of 1783 obviously require that the Company's southern boundary should be deemed a fixed line, not liable to extension by the mere act of the Company.

These considerations are submitted as showing that the legal rights of the Company did not extend beyond their forts on the shore or in the neighbourhood of Hudson's Bay, and such adjacent territory as these forts may under the circumstances have given them a right to; and that Ontario is entitled to have its northerly boundary line drawn accordingly.

If the evidence fails to satisfy the Arbitrators of the right of Ontario to this extent of territory, I refer them to the possible alternative lines mentioned at page 423 and following pages of the Book of Documents; and I will not detain the Arbitrators now by the statement and discussion of these other lines.

If there should seem to the Arbitrators to be too much doubt on the subject to enable them to determine with absolute precision the northern boundary of the Province, a boundary should be assigned, which would give to the Province the full territory which the commissions to the Governors definitely provided for, and such further territory to the north as may be just and reasonable in view of the whole case.

ARGUMENT OF MR. HODGINS, Q.C.

Mr. Thomas Hodgins, Q.C., for the Province of Ontario, next addressed the Arbitrators. He said: In the printed documents submitted by the Government of Ontario, three territories are mentioned, the localities and limits of which must in some measure be ascertained, in order to arrive at a proper solution of the question where the boundaries of Ontario should be traced. These territories are, (1) The Indian Territories; (2) the Territories claimed by the Hudson's Bay Company, and (3) the Territories known as Canada or New France.

The Indian Territories may be shortly described as those extensive tracts of land lying to the wesward and northward of Canada and the Hudson's Bay Company's Territory, not actually taken possession of by any civilized government prior to 1763. These Indian Territories are, as we contend, the lands described by Sir Alexander Mackenzie in his *Travels in North America*, published during the early part of the present century, and appear on the map as the Athabascan and Chippawayan Territories. These territories were specially reserved under the sovereignty of the Crown for the use of the Indians by the King's Proclamation of the 7th October, 1763, which established the Provinces of Quebec, East and West Florida, and Grenada, "within the countries and islands ceded to the Crown" by the Treaty of Paris of the 10th February, 1763. That Proclamation describes them as "the lands lying to the westward of the sources of the rivers which fall into the sea from the west and north-west;" and as "such parts of our dominions and territories as, not having been ceded to us, are reserved to the Indians, or any of them, as their hunting grounds;" and again, as "lands which not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid." * They are also described in the first section of the Act of 1803, which extended the jurisdiction of the Courts of Lower and Upper Canada over crimes and offences committed within certain parts of North America, in the following words:—"Indian Territories or other parts of America, not within the limits of the Provinces of Lower or Upper Canada, or either of them, or of the jurisdiction of the Courts established in those Provinces, or within the limits of any civil government of the United States of America." † No more clearly defined locality is given to these territories in any of the State Papers relating to North America; but Lord Selkirk in his *Sketch of the British Fur Trade in North America*, published in 1816, refers to them thus:—"This vague term, 'Indian Territories,' has been used without any definition to point out the particular territories to which the Act is meant to apply." "There are, however, extensive tracts of country to which the provisions of the Act unquestionably do apply, viz., those which lie to the north and west of the Hudson's Bay Territories, and which are known in Canada by the general name of 'Athabasca.' It was here that the violences, which gave occasion to the Act, were committed; and these are the only districts in which a total defect of jurisdiction described in the preamble of the Act was to be found." ‡

The other territories are those which, prior to the cession of Canada in 1763, formed the possessions of the King of England, and are claimed as the "Hudson's Bay Company's Territory," and the possessions of the King of France, and known as "Canada or New France." That portion of this latter territory lying west of the Ottawa and Lake Temiscaming, and of "a line drawn due north to the boundary line" or "shore" "of Hudson's Bay"—excepting the portion south of the great lakes, and west to the Mississippi, ceded to the United States in 1783—now forms the territory of the Province of Ontario. The diplomatic correspondence and state papers, printed in the Book of Documents, show that for a series of years, prior to 1763, the territory about the shores of Hudson's Bay was a chronic subject of dispute, of diplomatic negotiation, and of treaties, between the English and French Governments. From 1668 to 1755, the chief subject of discussion between the French Ministers and their Governors in Canada, and the English Ministers and the French Plenipotentiaries, was what were the territorial limits or boundaries of the two Sovereigns about Hudson's Bay.

* Book of Documents, p. 26. † *Ibid.*, p. 5.

‡ Earl Selkirk, *Sketch of the Fur Trade*, pp. 85-6.

Taking first the question to which Sovereign the southern limits of Hudson's Bay belonged, it will be found that after the Treaty of Utrecht in 1713, the English Ministers asserted that the whole of Hudson's Bay, including of course the southern shore inland to line 49, belonged to Great Britain. On the other hand, the representatives of the Crown of France contended that their earlier discoveries, their prior possession, and their settlements, had made that southern shore part of the territory of Canada. Certainly up to 1700, the Hudson's Bay Company conceded to the French the sovereignty of the southern portion of James' Bay south of the Albany River on the west,—or line 53° north latitude.* But subsequently a gradual advance was made in the territorial claims of the Hudson's Bay Company, as follows :—To the Canute or Hudson River in 52° N. latitude †; to Lake Miskosinke or Mistoveny in 51½° N. latitude ‡; although no new possessory rights were acquired by Great Britain or the Company in the disputed territory between 1700 and 1713.

After the Treaty of Utrecht of 1713, the claim presented by the Company to the English Government advanced the boundary to line 49° N. latitude. § That Treaty restored—not surrendered—to England "the Bay and Streights of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Streights which belong thereto," all of which with the fortresses there erected, "either before or since the French seized the same," were to be given up within six months from the ratification of the Treaty. It further provided that the conterminous limits of the territories of the two nations, at Hudson's Bay, should be determined within a year by Commissioners to be named by each Government; so as to fix "the limits between the said Bay of Hudson and the places appertaining to the French—which limits both the British and French subjects shall be wholly forbidden to pass over or thereby to go to each other by sea or land." This Treaty, notwithstanding the exclusion, gave to the French a right to use the shores of the Bay, whatever meaning may be attached to the following words : "It is, however, provided that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land, or by sea, whithersoever they please, out of the lands of the said Bay, together with all their goods, merchandises, arms, and effects of what nature or condition soever," except munitions of war. ‖ The Commissioners were appointed, but never determined the question of boundary. The British Commissioners, inspired by the Hudson's Bay Company, claimed for the first time as the boundary, the line 49° north latitude. ¶ This the Commissioners of the French King resisted, contending that the territory claimed was part of Canada.

Now at that time the Hudson's Bay Company had not any territorial occupation beyond a few small posts or a widely-scattered fringe of settlements, about three or four, on the shores of the Bay, and from which their trade with the Indians was carried on. This fact appears in the evidence taken by a Committee of the House of Commons in 1749. Historically the same fact is stated by writers and officers of the Company who dealt with the question from personal knowledge. In Robson's *Account of Hudson's Bay*, published in 1753, it is stated :—"The Company have, for sixty years, slept at the edge of a frozen sea. They have shown no curiosity to penetrate further themselves, and have exerted all their art and power to crush the spirit in others." (p. 6.) Further on, in speaking of the Indians, he shows how the French had gone inland, and had—unmolested by the Company—established forts and trading settlements with the Indians, and which, according to the acknowledged rules of international law, had given the French King proprietary and sovereign rights over the territory thus occupied by his subjects. "The French," he says, "live and trade with the Indians within the country at the heads of the rivers that run down to the English factories." "In consequence of this narrow spirit of self-interest in the Company, the French have been encouraged to travel many hundred miles overland from Canada, and up many rivers that have great waterfalls, in order to make trading settlements; and there they carry on a friendly intercourse with the natives.

* Book of Documents, p. 123. † *Ibid.*, p. 124.
‡ *Ibid.*, p. 129. § *Ibid.*, p. 132.
‖ *Ibid.*, p. 16. ¶ *Ibid.*, p. 132.

at the head of most of the rivers westward of the Bay, even as far as the Churchill River, and intercept the Company's trade." "There are fine improvable lands up the rivers of the Bay, and no British settlements or colonies are made or attempted to be made there." (p. 7.)

Bowen's Geography, published in 1747, says: "The bottom of the Bay is by the French pretended to be part of New France; and indeed, to cross the country from St. Margaret's River (meaning the St. Maurice or the Saguenay) which runs into the river of Canada or St. Lawrence, to Rupert's River, at the bottom of Hudson's Bay, is not above 150 miles. The French have a house or settlement for trade near the southern branch of Moose River, about 100 miles above the factory, where they sell their goods cheaper than the Company do: although it be very difficult and expensive to carry them so far from Canada. . . . The French get all the choice skins, and leave only the refuse for the Company. The French have also got another house (Fort Nemiskau) pretty high up, upon Rupert's River, by which they have gained all the trade upon the East Main, except a little the Company get at Slude River, the mouth of which is about thirty leagues to the north of Rupert's River." And further on, referring to the absence of English trade with the interior, the writer says that "The English who trade here have no plantations or settlements within land, but live near the coast within their forts, in little houses or huts."* Governor Pownall, in his Report on the French posts in North America, states that by their influence with the Indians, the French had been admitted to a landed possession and had become possessed of a real interest in and a real command over the country.†

The French Government prior to the Treaty of Utrecht claimed the whole of that territory; and after the Treaty they continued to claim it as part of "Canada." They contended:—"The term 'restitution,' which has been used in the Treaty, conveys the idea clearly that the English can claim only what they have possessed; and as they never had but a few establishments on the sea coast, it is evident that the interior of the country is considered as belonging to France."‡ The French King, Louis XIV., in a letter to M. De la Barre, dated the 5th August, 1683, claimed that the actual possession of the territory about the Bay had been taken in his name prior to the possession of the English. His letter states, "I recommend you to prevent the English, as much as possible, from establishing themselves in Hudson's Bay, possession whereof was taken in my name several years ago; and as Col. d'Unguent (Dongan) appointed Governor of New York by the King of England, has had precise orders on the part of the said King to maintain good correspondence with us, and carefully avoid whatever may interrupt it, I doubt not the difficulties you have experienced on the side of the English will cease for the future."‖

The facts connected with the right of possession then claimed by the French King, will be found in a letter from M. Talon to the King, dated Quebec, Nov. 2, 1671, in which he states that he had despatched Father Albanel and Sieur de St. Simon to Hudson's Bay.§ Then, further on, the result of their journey is thus described: "Father Charles Albanel, Jesuit Missionary, employed in the instruction of the Indian nations and Montagnais, and Paul Denis de St. Simon, commissary, and deputed by M. Talon, Intendant of Canada, to take possession in the King's name of the countries, lands, lakes and rivers, which lie between the banks of the River St. Lawrence as far as the shores of the straits of the Fretum Davis, including Hudson's Bay, and adjacent lands and seas, being at Miskaouto, Nagasit, places where the Indians meet to trade, and at the River Nimiskau (Rupert River) which rises in Lake Nemiskau, the residence of Capt. Kiaskou, Chief of all the Indians inhabiting the North Sea and Hudson's Bay, and on the 9th of July, 1672, planted the Cross, with the Captain's consent, and in His Majesty's name set up the arms of France, on the said Lake Nemiskau, at the mouth of the river of the same name. On the 19th of the same month, being at the River Minahigouskae, Sossibahourat, captain of the Mistasirenois, having consented, they did set up in like manner the said arms, after having turned up a sod of earth, pulled up some grass, planted

* Book of Documents, p. 371. † *Ibid.*, p. 380. ‡ *Ibid.*, p. 372. ‖ *Ibid.*, p. 106. § *Ibid.*, p. 104.

some shrubs and performed other necessary ceremonies. They made known to the Indian nations, in their language, that they subjected them to the French nation, and that they should acknowledge in future King Louis XIV., for their Monarch and Sovereign Lord. In witness whereof, the said minute was signed by Father Albanel, Sieur de St. Simon, and by Sebastian Provero ; and the chiefs of each Indian nation, to the number of eleven, made their hieroglyphical marks." A similar surrender by the Indians on the west side of Hudson's Bay took place at Sault Ste. Marie.* In these statements we have not only the actual taking possession, but we have that act of Indian surrender which has been recognized by the Crown of England for years ; the actual surrender of the Indian territory by a document signed by the chiefs of those Indians who were the occupants of the territory about Hudson's Bay, acknowledging that they surrendered the territory to the King of France, in the same manner as the Indian territories have been and still are surrendered to the Crown in Canada.

The Treaty of Utrecht did not surrender any portion of the territory of Canada or New France, it only restored the Bay and Straits of Hudson ; therefore whatever should be included in that description was ceded to the Crown of England. The English could not claim more territory than that named in the Treaty, and as "Canada" was not named or ceded, no part of it, as such, became the property of the Crown of England. The word used by the French was *restitura*. The rule of interpretation in regard to such Treaties is, that where the Treaty is alleged to be capable of two interpretations, that which is most favourable to the ceding power shall govern. Such was the decision of the United States Supreme Court in the case of the *United States vs. Arredondo.*† In that case there was a difference between the American and Spanish copies of the Treaty ; but the Court held that the version which was most favourable to Spain, the ceding power, should govern. In giving judgment the Court said : "A Treaty of cession is a deed of the ceded territory ; the Sovereign is the grantor ; the act is his, so far as it relates to the cession ; the Treaty is his act and deed." "The King of Spain was the grantor ; the Treaty was his deed ; the exception was made by him ; and its nature and effect depended upon his intention expressed by his words in reference to the thing granted, and the thing reserved, and excepted in and by the grant." "We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private—*a fortiori* in public—grants."

Examining this Treaty by the light of this decision, we find that the French King "restored" only that which had been originally English territory—on the Bay and Straits of Hudson ; not by name any territory of Canada or New France. The French King being the ceding power, could not be held bound by a larger cession than the words of the Treaty covered. This view was strongly and effectively maintained by the French Commissioners. In M. de Lamothe's memoirs to the Duke of Orleans, he reported : "The English have never possessed the lands that the French have at Hudson's Bay, therefore it is impossible for the King of France to restore them to them ; for one cannot restore more than that which has been taken by usurpation. The fact is that at the time of the said Treaty of Utrecht, the French possessed one part of the Strait and Bay of Hudson, and the English possessed the other. It is very true that, some time before, the King of France had conquered the English part ; and it is of this that it is understood that restitution is to be made."‡ To the same effect is the memoir of M. D'Auteuil, Attorney-General of Canada : "The Treaty of Utrecht speaks only of restitution ; let the English show that which the French have taken from them, and they will restore it to them ; but all that they demand beyond this they demand without any appearance of right." "It is well to remark that the English in all the places of the said Bay and Straits which they have occupied, have always stopped at the border of the sea, while the French, from the foundation of the colony of Canada, have not ceased to traverse all the lands and rivers bordering on the said Bay, taking possession of all the places and founding posts and missions. They cannot say that any land, or river, or lake, belongs

* Book of Documents, pp. 343, 61-2.

† 6 Peters U.S., 691.

‡ Book of Documents, p. 370

to Hudson's Bay, because if all the rivers which empty into this Bay, or which communicate with it, belongs to it, it might be said that all New France belonged to them,—the Saguenay and the St. Lawrence communicating with the Bay by the lakes. That this being incontestable, it is for France to regulate the limits in this particular quarter, and that of the little which she may cede, she will always cede that which is her own, as the English cannot pretend to anything except a very small extent of the country adjoining the forts which they have possessed at the foot of the Bay."* And consistent with these views, it appears that after the Treaty the French erected a fort at the head of the Albany River.† The Hudson's Bay Company claimed that the boundary should be at the 49th parallel, while the French insisted it should be at the 55th parallel. The object of the Company being, as stated by Chief Justice Draper, "to establish an arbitrary boundary and to secure the fur trade from the French."‡

The negotiations between the Commissioners appear to have ended about 1720, probably because during that year several of the chief Ministers of State whose names appear in these papers—notably Mr. Secretary Craggs, the Earl of Sunderland, het Chancellor of the Exchequer, and others—became implicated in corrupt transactions with the South Sea Company, which caused their expulsion from Parliament the following year. Their successors in the Government appear to have allowed the negotiations to lapse. "Nothing was done," wrote the Duke de Choiseuil in 1761.

The next chapters in this history are the capture of Quebec and the Treaty of Paris of 1763, by which Canada was ceded to England. By the Articles of the Capitulation of Montreal between General Amherst and the Marquis de Vaudreuil in 1760, and the Treaty of 1763, France ceded to England "in full right, Canada and all its dependencies, and the sovereignty and property acquired, by treaty or otherwise," and declared that "a line drawn along the middle of the River Mississippi" should be the limits of the British and French Territories.

Neither in the capitulation between General Amherst and the Marquis de Vaudreuil, nor in the Treaty of 1763, is there any reference to the territories about Hudson's Bay. But I take this ground now: By this capitulation, by this treaty, the English King succeeded to the sovereignty, to the prerogative rights, and to the assertion of title, over the territories which the French King claimed about Hudson's Bay. In addition to his own prerogatives as King of England, he became clothed with the prerogatives which had pertained to the King of France as the Sovereign over this territory; and this double prerogative was to be exercised in such a way as would best maintain the public right of the people to whose allegiance he had succeeded. The claim to the territories about Hudson's Bay had been in contest between the King of France and the Hudson's Bay Company. It now became a question of territorial right between the King of England, as representing the possessory rights and sovereignty of the King of France, on the one side, and the Hudson's Bay Company on the other. Succeeding, therefore, to the French sovereignty over this territory and people, the Crown of England had the right to claim as against the Hudson's Bay Company, and all others, the French sovereignty, as if the French authority had not been suppressed, and as if the French authority was itself seeking to enforce its territorial claims. Viewed in the light of this claim of the double sovereignty which it thus had, the subsequent proceedings of the Crown of England in regard to the boundaries of Upper Canada, should weigh with the Arbitrators in determining what effect and what interpretation should be given to these subsequent proceedings as political acts of state. The interpretation, I take it, of this double sovereignty, must be that which was the largest and most advantageous for the public rights of the Sovereign and people. This doctrine of succession to sovereign rights has received judicial interpretation in regard to the property and territory, and sovereign rights, of a displaced power. And the judicial interpretation which I shall quote is cited with approval in the last edition of *Wheaton on International Law*, as being a fair and proper exposition of public law on that question. In the case of the *United States vs. McRae* §, Vice-Chancellor (now Lord Justice) James, says: "I apprehend it to be the

* Book of Documents, p. 368. † *Ibid.*, p. 363. ‡ *Ibid.*, p. 242.

§ Law Reports, 8 Equity, 75.

clear, public, universal law, that any Government which *de facto* succeeds to any other Government, whether by revolution or restoration, conquest or re-conquest, succeeds to all the public property, to everything in the nature of public property, and to all rights in respect of the public property of the displaced power,—whatever may be the nature or origin of the title of such displaced power." "But this right is the right of succession, is the right of representation; it is a right not paramount but derived, I will not say under, but through the suppressed and displaced authority, and can only be enforced in the same way, and to the same extent, and subject to the same co-relative obligations and rights, as if that authority had not been suppressed and displaced, and was itself seeking to enforce it." The same doctrine had been previously recognized in England, in the case of the *King of the Two Sicilies vs. Wilcox*,* *United States vs. Prioleau*,† and in Canada in the case of *United States vs. Boyd*.‡ The Supreme Court of the United States has in various cases affirmed the same doctrine: that the new government takes the place of that which has passed away, and succeeds to all the rights and property of the original sovereign.

Now, with reference to the alleged claims of the Hudson's Bay Company to the lands south of Hudson's Bay, to line 49°, it may reasonably be argued that there could be no estoppel between the Crown of England, clothed with the double sovereignty of the French and English Crowns, over this disputed territory, and the Hudson's Bay Company. Whatever representations and claims the Hudson's Bay Company may have induced the English Government to make prior to the cession of the territory, would not estop the Crown of England, having acquired the sovereignty which France had held, in any contention between it and the Hudson's Bay Company.

Chief Justice Harrison—I fancy that Great Britain could not have conferred on the Hudson's Bay Company any greater rights than Great Britain at the time of the grant possessed.

Mr. Hodgins—The cession of the disputed territory would not accrue to the Hudson's Bay Company.

Chief Justice Harrison—Not in the absence of an express grant.

Mr. Hodgins—We say that this territory about the south shore of Hudson's Bay had been surrendered by Indian treaty to the Crown of France prior to the Hudson's Bay Company's claim of title, and had been occupied and thenceforward claimed as French territory up to a period after the Treaty of Utrecht, and therefore could not have been granted to the Hudson's Bay Company. And that there would be no estoppel operating in favour of the Hudson's Bay Company by reason of the subsequent acquirement of that territory by the Crown of England in 1763.

We come next to the King's Proclamation of the 7th October, 1763, under which the Provinces of Quebec, East and West Florida, and Grenada, were established. In that Proclamation there seems to be an express reservation. The Proclamation is not printed in full in Book of Documents, but it will be found in a work which I obtained from the Education Department of Ontario, in which the terms of Capitulation, the Treaty of Peace, and the Proclamations in regard to the earlier establishment of Quebec and the other Provinces, are collected. That Proclamation reserves out of the extensive and valuable acquisitions in America secured to the Crown by the Treaty of Paris, other territories than those placed under the four Governments then constituted, viz., a territory not yet ceded to the Crown, which, I assume, included the Indian territories before referred to, and a territory beyond the sources of the rivers which fall into the Atlantic. It was assumed at that time, and some of the maps confirmed the assumption, that Lake Winnipeg was connected with Pigeon River, and so through the great lakes with the St. Lawrence. The Crown therefore reserved for future disposition the territories referred to, and expressly limited the jurisdiction of the Governors of the new Provinces in a way markedly different from the commissions which issued subsequently under the Quebec Act: "That no Governor or Commander-in-Chief do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, or for lands beyond the heads or sources of any of the rivers

* 1 Simons N.S., 301. † 2 Hemming & Miller, 563.

‡ 15 Grant's Chancery, 138.

which fall into the Atlantic Ocean, from the west or north-west, or any lands whatever, which, not having been ceded to or purchased by us, are reserved to the Indians."

The next document in point of time is the Quebec Act of 1774. The Attorney-General has left me little to add in construing that Act, and he has shown that the words "during His Majesty's pleasure," preserved the future exercise of the Royal prerogative. The Dominion contends for the most limited construction which can be placed upon the term "northward" in that Act—that it means "due north." The rule is otherwise stated by the Supreme Court of the United States: "In great questions which concern the boundaries of States—when great natural boundaries are established in general terms with a view to public convenience and the avoidance of controversy—the great object, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals."* But apart from the construction placed by the Crown upon that word "northward," immediately after the passing of the Act, we find in the preamble of the Act, and on the ground within the disputed territory—that is, between the line drawn "due north" from the junction of the Ohio and Mississippi, and the line of the "banks of the Mississippi River"—irresistible arguments against the contention of the Dominion. Now, within that disputed territory between the lines referred to, there were, at the time, several well-known settlements and trading forts of the French, as shown on the maps: Forts Kaministiquia, St. Pierre, St. Charles, La Pointe or Chacouamicon, St. Croix, Bonsecour, St. Nicholas, Crevecœur, St. Louis, De Chartres, and the settlements on Lake Superior, west of this "due north" line.

The preamble of the Act shows that the intention of Parliament was to extend civil government over French settlements left out of governmental control; for after reciting the Proclamation of 1763, it says: "Whereas, by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein." Now, if the object of the Act, as stated in the preamble, was to extend civil government over the colonies and settlements not theretofore within the limits of any of the Provinces, can any reasonable argument be advanced for excluding from the benefits of that Act a long and narrow strip of territory containing the settlements and forts named, lying between this "due north" line and the eastern banks of the Mississippi? England, at the surrender of Canada, claimed to the line of the Mississippi, and the map produced by the Dominion as the one containing the line traced between General Amherst and the Marquis de Vaudreuil, shows that the line started from Red Lake, one of the sources of the Mississippi. And as if to place the boundary beyond question, the Treaty declares that the limits between the British and French territories shall "be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville," etc.

But,—still keeping in view the object of the Quebec Act as set forth in the preamble, and remembering that the Crown in its negotiations with France had perseveringly insisted upon the line of the Mississippi as the western boundary of Canada, and had obtained that boundary,—there is a further point which I would press upon the Arbitrators. The first document promulgated by the Crown immediately after the passing of the Act, was a commission to Sir Guy Carleton, in December, 1774, as Governor-General of the new Province of Quebec, and it gives an authoritive interpretation by the Crown of the indefinite word "northward," used in the Act of Parliament, and which was peculiarly within the power and prerogative of the Crown to interpret. That commission gives the boundaries mentioned in the Quebec Act until it comes to the words "westward to the banks of the Mississippi and northward," not "due north," but "northward along the eastern bank of the said river (Mississippi)." This description must be taken to be the Crown's interpretation of the boundaries which the Act of Parliament had established for the Province of Quebec, and was a political act of state within the prerogative right of the Crown—to fix the boundaries where they were uncertain, and even to extend them if

*Handley's Lessee *v.* Anthony, 5, Wheaton, 374.

necessary; and such act of the Crown is binding upon the Arbitrators and cannot now be questioned. That Governor-General, as well as his successor, had thus from the Crown complete jurisdiction over the territory to the line of the banks of the Mississippi. But when the southern portion of the Province of Quebec was ceded to the United States, by the Treaty of 1783, the Crown had again to interpret the Quebec Act as to the remaining territory; and in the commission issued by the Crown in 1786, appointing Sir Guy Carleton, Governor-General over what remained of the Province of Quebec, the Crown defined that Province as extending on the west to the Lake of the Woods and the Mississippi River.*

These commissions to the Governors were political acts of state or of sovereign power over the territory in question, and brought the territory within the jurisdiction of the civil government of Quebec delegated to the Governors. The Courts of the United States have been called upon to determine questions of boundaries similar to that now before the Arbitrators; and by a consensus of decisions from 1818 to the present, their courts say that in all these questions affecting boundaries the act is a political act. We call it a prerogative act. They hold that where the political act has been recognized either by the Executive or by Congress, either officially or in legislative documents, or in diplomatic controversies with foreign nations, that the interpretation put upon the boundaries of territories, and the limitation of such boundaries, and the claim in regard to such boundaries, shall govern the civil courts. Chief Justice Marshall, in delivering the judgment of the Supreme Court on the question of the boundaries of Louisiana and West Florida, in the case of *Foster v. Neilson*,† says: "After these acts of sovereign power over the territory in dispute, to maintain the opposite construction would certainly be an anomaly in the history and practice of nations. If the Government have unequivocally asserted its right of dominion over a country of which it is in possession, and which it claims under a treaty, if the Legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting boundaries of nations, is more a political than a legal question, and in its discussion the courts of every country must respect the pronounced will of the Government. To do otherwise would be to subvert those principles which govern the relations between the legislative and judicial departments, and mark the limits of each." This judgment has been cited with approval, and has been followed in all subsequent cases of disputed boundaries of states or territories.

But we are not limited to these unquestioned and unquestionable prerogative acts of the Crown in interpreting the statute. We come next to the division of the Province of Quebec into Upper and Lower Canada; and if words mean what they express, then the words used in the Order in Council,‡ in the paper presented to the Houses of Parliament, previous to the passing of the Act of 1791,§ in the proclamation of General Clarke,‖ and in the Commissions which were subsequently issued to the Governors under that Act¶ show conclusively the intention of the Crown as to the boundaries of the new Province of Upper Canada, whether as dividing the old Province of Quebec, or as settling the uncertain course of the "northward" line of the Quebec Act. The Order of the King in Council and the Proclamation issued immediately after the passing of the Act, were also "acts of sovereign power over the territory" in question, and are, we contend, as binding on the arbitrators as they would be on a court of justice. If these acts of the Crown were more than a division of the Province of Quebec; if they were also an extension of the boundaries of the old Province of Quebec, they are equally acts of the prerogative, done with the concurrence of the other estates of the realm, and are binding upon this Arbitration as a court of justice. Therefore, in whatever light the Order in Council of 1791, and the Proclamation under it, are viewed, that Proclamation—giving the boundaries described in the paper presented to the Parliament, and sanctioned by the Order in Council—is the document which determines what are the boundaries of the Province of Ontario. It determined what were the boundaries of the Province of Upper Canada. The Statute of 1841 united the Province of Upper Canada with the Province

* Book of Documents, pp. 47-8. † 2 Peters, U. S., 254. ‡ Book of Documents, p. 388.
§ *Ibid.*, p. 411. ‖ *Ibid.*, p. 27. ¶ *Ibid.*, pp. 48-53.

of Lower Canada, but did not alter the boundaries of either. The Confederation Act of 1867 declares that the boundaries of the former Province of Upper Canada shall be the boundaries of the Province of Ontario. Thus we are brought back to the Order in Council and Proclamation of 1791, as to what are the true boundaries of Ontario. The paper submitted to Parliament, and the Proclamation, give two limits:

First.—That the boundary shall commence at the St. Lawrence at Longueuil, thence to the Ottawa River, thence up the Ottawa to the head of Lake Temiscaming, and thence in a line "due north until it strikes the boundary line of Hudson's Bay"—not, of the Hudson's Bay Company's territory. And we have in the commissions to the Governors-General, as the Attorney-General has stated, a further interpretation of the word "boundary"—the use of the word "shore." From 1791 to 1846 every commission issued by the Crown contains the expressions—"strikes the boundary line," or "strikes" or "reaches" the "shore of Hudson's Bay." No less than eighteen commissions issued by the Crown of England to the Governors between those dates, use the terms "strikes" or "reaches" the boundary line or the shore of Hudson's Bay. Therefore we contend that the Crown of England, having what may be called the double sovereignty of the French and English Crowns in regard to that disputed southern shore of Hudson's Bay—whether the former sovereignty had been admitted or denied—intended that this new Province of Upper Canada should extend to the southern shore of Hudson's Bay.

Second.—The Parliamentary paper and the Proclamation say, "westward to the utmost extent of the country commonly called or known by the name of Canada." Now the Crown here uses a word which the Crown had knowledge of. In the negotiations with the French King, the Crown had been contending for the cession of the country called or known by the name of "Canada." It had obtained, first by conquest, and then by treaty, the territory or country called or known by the name of "Canada." Now, the limits of Canada were known either from descriptions in State documents, or from a known extent of territory—known to the Crown and to the officers of the Crown—or known by localities which had certain names admitted to be within the territory or country called or known by the name of "Canada." To aid us in finding the extent of Canada we may refer to maps published in England and France prior to and at the time of this Proclamation. We may also refer to the prior admissions or reports by the officers of the English and French Governments; to the works of historians and geographers, and the knowledge acquired by the actual experience of travellers; and from all these we can obtain with tolerable certainty a knowledge of the extent of the territory called or known by the name of "Canada." Now, it is not necessary, so far as this arbitration is concerned, to consider that portion south of the present boundary between the United States and ourselves, or to determine whether it was part of Canada or not. I have argued that it was; and the United States Courts in dealing with questions of titles there have held that the territory lying to the east of the Mississippi was formerly Canada, and, that the United States had succeeded to the title of the King of France in that part of Canada which he had prior to the conquest by Great Britain in 1759, and which was ceded to England by the treaty of 1763.* So far, therefore, as that territory is concerned, had it remained the property of England it would have become part of the new Province under the term "Canada," used in the Proclamation of 1791. North of the line of the Mississippi, and north of what is now the international boundary, there were French forts or trading posts. These French forts—Fort Bourbon, Fort Dauphin, Fort La Reine, Fort Rouge, Fort St. Charles, Fort Maurepas, Fort St. Pierre and Fort Kaministiquia—appear on both French and English maps published prior and subsequent to the surrender of Canada. Now, to what Sovereign did these forts belong? Did they belong to the Sovereign of England or of France? Were they occupied by English or by French subjects? Every record we have, whether taken from English or French sources, admits that these forts were French; that all through that interior western country the French had established their posts, had carried on trade with the Indians, and were more adventurous than the English. The English had simply occupied a scattered fringe of posts on the shores of Hudson's Bay, while the French had gone into the interior of the country, had established these trading

* United States *vs.* Repentigny, 5 Wallace, U. S., 211.

posts, and by virtue of their establishment had occupied the territory with the knowledge and tacit acquiescence of the English—if the English had been entitled by the possession of the coasts to that interior country,—had occupied the interior portions of the country and made settlements, and had therefore acquired for the King of France the dominion and sovereignty of that territory. That interior territory, therefore, as part of the territory of Canada, was surrendered under the Treaty of 1763. I think that this is put beyond question by the Articles of Capitulation between the Marquis de Vaudreuil and General Amherst. Article 3 mentions the posts situated on the frontiers—Detroit, Michillimackinac, and other posts. Article 25 provides for the affairs of the trading company known as the Indian or Quebec Company, referred to in the Treaty of Utrecht. Article 37 provides that the Canadians and French "settled or trading in the whole extent of the Colony of Canada," shall preserve peaceable possession of their goods both movable and unmovable; they shall also retain the furs in the "posts above" which belong to them, and those which may be on their way to Montreal; and they shall have leave to send canoes to fetch furs which shall have remained in the posts. These particular references to the settlements and posts in the countries above, clearly point to the French trading posts on Lake Superior and in the country west of that lake. Then we have the map which is printed in the Dominion case, which shows that whatever may have been the dispute between the Marquis de Vaudreuil and General Amherst as to the Mississippi, the Marquis admitted that the western boundary of Canada extended to Red Lake—a lake immediately south of the Lake of the Woods. They did not dispute as to the territories north of that lake; and the terms of the capitulation covered the posts and forts in the countries above, which posts and forts were those I have mentioned, some of which were in what has since been known as the Red River Territory.

After these admissions by the Marquis de Vaudreuil on behalf of the King of France, respecting "the posts and countries above," could the French be heard contending that the country within which these posts and settlements were to be found was not a portion of Canada? French officers had established posts there for the benefit of the government of Canada. A trade was carried on between those posts and Montreal, and by distinct references, in the terms of the capitulation, provision was made respecting the French subjects and their property and furs therein, which would have been improper unless as referring to the territory of Canada then surrendered to the British Crown. The only dispute between the British and French was whether the south-westerly boundary should be along the River Ohio or along the River Mississippi. Then if those western posts and settlements formed part of the country commonly called or known by the name of "Canada," clearly they were included in the boundaries of Upper Canada by the Proclamation of 1791. Fort Nepigon, Fort Kaministiquia—tracing them westward,—Forts St. Pierre, St. Charles, La Reine, Maurepas, Dauphin, Bourbon,—some of them on Lake Superior, others on Pigeon River and the Lake of the Woods, Lake Winnipeg and Lake Manitoba. The evidence that these forts did exist is found not only in the documents furnished to the Arbitrators, but some of them are referred to in Sir Alex. Mackenzie's travels. The preface to his work contains the following statement at page lxv.: "Fort Dauphin, which was established by the French before the Conquest;" and again at page lxxiii.: "It may be proper to observe that the French had two settlements upon the Saskatchiwine long before and at the Conquest of Canada, the first at the Pasquia, near Carrot River, and the other at Nepawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent." The Nepawi settlement mentioned by Mackenzie is Fort St. Louis or Nipeween, on the Saskatchewan. He also refers to Fort Kaministiquia as having been under the French Government of Canada.

Now the Dominion Case asserts a general principle of international law, which, if there was no countervailing doctrine or fact against it, would be held to be clearly applicable to cases where there was only the simple fact of possession. "When a nation takes possession of a country with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, etc." That is true to a limited extent; but this other doctrine is also true: that where the subjects of another Crown take possession of the same territory—either close to the settlements originally made by the first discoverers,

or get by some means into the interior of that territory, to the head waters of the rivers which flow down through the territory first settled—the subjects of the other Crown become entitled to that possession and territory if they are allowed to remain undisturbed, and their sovereign becomes entitled to the dominion over that territory. I quote first from Twiss on the *Law of Nations in Time of Peace*, page 166: "When discovery has not been immediately followed by settlement, but the fact of discovery has been notified, other nations by courtesy pay respect to the notification; and the usage of nations has been to presume that settlement will take place within a reasonable time; but unless discovery has been followed, within a reasonable time, by some sort of settlement, the presumption arising out of notification is rebutted by *non-user*, and lapse of time gives rise to the opposite presumption of abandonment." He then quotes the argument of the English plenipotentiaries at the conference between Great Britain and the United States in 1826, that it is only in proportion as first discovery is followed by exploration; by formally taking possession in the name of the discoverer's sovereign; by occupation and settlement more or less permanent; by purchase of the territory on receiving the sovereignty from the nation; or some of these acts that the title is strengthened and confirmed.

The rule is further stated in *Vattel's Law of Nations*, page 170: "If, at the same time, two or more nations discover and take possession of an island or other desert land without an owner, they ought to agree between themselves and make an equitable partition; but if they cannot agree, each will have the right of empire and the domain in the parts in which they have first settled." Apply this to the case of the English and French struggling for the right of possession and sovereignty over this northern continent. Admit that the English did make discoveries and settlements on the shores of Hudson's Bay. The French, prior to that, had made settlements along the St. Lawrence and up towards Hudson's Bay, and subsequently within the interior of the country where the rivers flowing into Hudson's Bay took their rise. The two nations should agree as to their limits; but if they do not or cannot agree, each nation has the right of empire in the part respectively first settled by its subjects. The English will thus be entitled to so much of the shores of the Bay and of the interior country as will not interfere with the possesssory rights of the French at the Bay and in the west. The French will have the right to the territory they had settled upon, and up to such a line as the Chief Justice referred to when he suggested the illustration of a line along the middle of a river; so that it must be between the English settlements on the Bay, and the French settlements on the Bay and in the interior, that the line should be drawn. The English, after making a few small settlements on the shores of the Bay, rested there for years, and neglected to take possession of the interior. The French then took possession; and the effect of these acts of the two nations is governed by the rule thus stated by Vattel at page 171: "It may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights in a country which has not an owner, without being solicitous to take possession of the whole country. In this case another nation may take possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence;" that is, to the extent of the territory they have acquired, or to the middle line between the two territories. And it is interesting to find the opinion of an English Sovereign, Queen Elizabeth, affirming a principle which has since been recognized as the correct one by writers on International Law.—In *Twiss on the Law of Nations*, at page 173, we find the following: "When Mendoza, the Spanish Ambassador, remonstrated against the expedition of Drake, Queen Elizabeth replied that she 'knew no right that the Spaniards had to any places, other than those they were in actual possession of. For that they having touched only here and there upon a coast, and given names to a few rivers and capes, were such insignificant things as could in no wise entitle to a propriety, further than in parts where they actually settled and continued to inhabit." Again Twiss says, at page 175: "Settlement, when it has supervened on discovery, constitutes a perfect title; but a title by settlement, when not combined with a title by discovery, is in itself imperfect, and its immediate validity will depend upon one or other condition: that the right of discovery has been waived, *de jure*, by *non-user*, or that the right of occupancy has been

renounced *de facto*, by the abandonment of the territory." "Again, the presumption of law will always be in favour of a title by settlement." "Where a title by settlement is opposed to a title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar its claim to disturb the settlement." Wheaton, referring to this rule, says on page 220: "This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference—fairly to be drawn from his silence and neglect—of an original defect in his title or his intention to relinquish it."

Thus the Arbitrators will see that international law has incorporated the same doctrine of prescription as that which prevails in the municipal courts of every civilized community. Assuming that the Hudson's Bay Company had the right under their charter to go up those rivers which flowed into Hudson's Bay, and settle the country, did they exercise that right, or did they acquiesce in another nation taking that right from them? Clearly, they did so acquiesce. They knew that the French had gone inland to the heads of the rivers flowing into Hudson's Bay, and were trading with the Indians there; they knew that the French had established their forts and posts there; and they knew that these forts and posts indicated an occupation and settlement of the territory; and they knew all the legal results flowing from that occupation and settlement, which gave the French King proprietary and sovereign rights there; and they acquiesced in that occupation from the time the French settlements were made, and had acquiesced in it, up to the time of the cession of Canada in 1763; and the Hudson's Bay Company, and those who now claim under them, cannot be heard asserting to-day that there was no acquiescence, and that there was no *non-user* of the right which the charter gave them, of going into the interior and occupying this territory as their own. The Hudson's Bay Company, and the Dominion as claiming under them, assert title to the height of land or watershed line, on the ground that having taken possession of the mouths of certain rivers at Hudson's Bay, they were entitled to all the lands watered by the rivers flowing into the Bay. A similar ground was taken by the United States in 1827, but Twiss (p. 174) combats it, and shows it to be irreconcilable with other rules of international law to which all nations agree. And referring to the argument founded upon the grants in such charters as that to the Hudson's Bay Company, he says (173): "Those charters had no valid force or effect against the subjects of other sovereigns, but could only bind and restrain, *vigore suo*, those who were within the jurisdiction of the grantor of the charters; and that although they might confer upon the grantees an exclusive title against the subjects of the same sovereign power, they could only affect the subjects of other sovereign powers so far as the latter might be bound, by the common law of nations, to respect acts of discovery and occupation effected by members of other independent political communities."

Apply these doctrines to the case of the Province, and the result is clear. We have established the fact of the early surrender of the Indian title to the territory around the southern shores of Hudson's or James' Bay to the French King; the fact of the actual settlement and occupatisn of these interior posts by the French, and which, according to the rules of international law, had made that territory part of Canada or New France. We stand on the territorial rights which the French King had thus acquired; which the French King in 1763 ceded to the English Crown as Canada, with all its dependencies, and its settlements and posts in the whole extent of the Colony of Canada; which by the Quebec Act and Commissions to Governors, became the north-western part of the Province of Quebec; which by the Order in Council and Proclamation of 1791, and the commissions to Governors, became the former Province of Upper Canada, and which, by the British North America Act, has now become the territorial extent of the Province of Ontario.

Argument of Mr. MacMahon, Q.C.

Mr. Hugh MacMahon, Q.C., opened the case for the Dominion. He said: A great deal which had been argued upon the other side we have never questioned at all; and a

great part of what has been addressed to the Commissioners by my learned friend Mr. Hodgins, we agree with entirely.

What I propose doing in the first place is to glance cursorily at the evidence in regard to the early settlements; although I do not conceive it to have very much bearing on the case, still, as it has been pressed on the Arbitrators by the Attorney-General so very forcibly, I consider it necessary to view the facts as they appear from the historical documents.

France claimed in 1685, and in 1671—1671 to 1685—that she was entitled to the whole North-West, including what is claimed as the Hudson's Bay Territory. That claim was set up first by De Callières, when writing to the authorities in France in 1685, and afterwards.* His memoir was followed by the Marquis de Denonville's, when communicating with the same Government. It was stated in that memoir just as has been asserted by the Attorney-General, and that memoir is set forth in the New York Historical Documents, Vol. 9, 287, and also at page 304 of the same volume. But in that statement of M. de Denonville, he admits that documentary evidence could not even at that time be adduced in support of those visits having been made to Hudson's Bay. His words are:—"I annex to this letter a memoir of our rights to the entire of that country, of which our registers ought to be full, but no memorials of them are to be found."† When we come to examine into the facts of these asserted voyages, it will be found that not one of them was made until the voyage of Albanel, in 1672. It is asserted that Jean Bourdon, the Attorney-General, in 1656, explored the entire coast of Labrador and entered Hudson's Bay. Now, there is no record whatever of that—nothing whatever to support it; but there is a record in 1655, that Sieur Bourdon, then Attorney-General, was authorized to make a discovery of the Hudson's Bay, and it will be seen hereafter what he did in order to comply with that *arrêt* of the Sovereign Council. He made an attempt: he started on his voyage on May 2, 1657. His statement is contained on page 3 of the Dominion Case. He started on May 2, and returned on August 11 of the same year. My learned friend had to admit that there was no possible chance of his making a voyage to Hudson's Bay between those dates. The account of it, as given in the Relations of the Jesuits of 1658, page 9, is this:—"The 11th (August) there appeared the barque of M. Bourdon, which having descended the Grand River on the north side, sailed as far as the 55th degree, where it encountered a great bank of ice, which caused it to return, having lost two Hurons that it had taken as guides. The Esquimaux savages of the north massacred them, and wounded a Frenchman with three arrows and one cut with a knife." Jean Bourdon was of the Province of Quebec; he was well known to the Jesuits and trusted by them, and it is stated in the memoir that he went with Father Jogues on an embassy to Governor Dongan, then Governor of the Province of New York.‡

The other statement is that Father Dablon and Sieur de Vallière were ordered in 1661 to proceed to the country about Hudson's Bay, and that they went thither accordingly. Now, all the accounts agree in the statement that Dablon never reached Hudson's Bay. In Shea's *Charlevoix*, Vol 3, pp. 39, 40, it is stated that Father Dablon attempted to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any farther, being warned of the approach of the Iroquois. In the New York Historical Documents there is a note by the editor of these papers on page 97, which gives an account of the Rev. Father Dablon from the time of his arrival in Canada in 1665. He was immediately sent missionary to Onondaga, where he continued, with a brief interval, until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded only in reaching the head waters of the Nekauba, 300 miles from Lake St. John.§

* [The claim of France, from the first settlement of Canada, was that its boundaries extended on the west to the Pacific Ocean, and on the north to the Arctic. (See L'Escarbot, quoted p. 10, *ante.*)—G. E. L.]

† [See note ‖, p. 279, *ante.*—G. E. L.]

‡ [See, as to the actual voyage which Bourdon made into the Bay, note *, p. 278, *ante.*—G. E. L.]

§ [See note ‡, p. 278, *ante.*—G. E. L.]

An assertion is also made that some Indians came from about Hudson's Bay to Quebec in 1663, and that Sieur la Couture, with five men, proceeded overland to the Bay, possession whereof they took in the King's name.* There is no account of this voyage in *Charlevoix* or in the *Relations of the Jesuits;* and the authority relied upon is the same as my learned friend relies on as being furnished for the Marquis de Denonville, to which I have already referred as being untrustworthy. M. de Callières in his memoir, written in 1685, was twenty-one years after the time of which he writes. It is asserted in the memoir that Couture made that journey to the Hudson's Bay for the purpose of discovery; and taking that in connection with the fact that the Governor of the Province is compelled to admit that they have no record in any shape to which they could refer, although they ought to have many, and when we come to what really took place in 1671, during Talon's administration, we find that it was then that the desire existed that some one connected with the French should go to the Hudson's Bay, and, if possible, make a discovery of it;† and the design of putting all this forward in 1685 was to make the King of France and his Ministers believe that this country was then in the possession of the French. For what purpose? Because in 1682 they had gone to that territory, had taken possession of the forts built and set up by Gillam and others on behalf of the Hudson's Bay Company, and had destroyed property there; therefore it was necessary that they should account in some way for having gone into that territory and taken possession of it.‡ The next voyage claimed after that of Couture is the voyage of Sieur Duquet.

Chief Justice Harrison—Before these periods there can be no doubt that some Frenchmen had penetrated to Hudson's Bay.

Mr. MacMahon—No, not one. Fort Rupert was established in 1668; that was Gillam's Fort. It is admitted on all hands that Gillam built the first fort on the Bay.§ That was the first fort of any account upon the Hudson's Bay or anywhere in connection with it; this is not questioned by my learned friend. That fort was put up in the interest of Prince Rupert. I am merely going over the arguments of my learned friend in order to show on what a slight basis the historical statements have been built, and how willing the Province of Ontario have been to seize upon such papers, as authentic documents, in order to prove that this territory was French.

In 1663 Sieur Duquet, the King's attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay by order of Sieur D'Argenson, and to have renewed possession by setting up the King's Arms there a second time. By reference to page 129 of Mills' revised Report, it will be seen that that order could not have been given by D'Argenson, because he had left Canada on September 16, 1661, two years before this pretended order was given to Sieur Duquet; and there is ample authority for that in Shea's *Charlevoix*, vol. 8, page 65, note 5, and p. 17. I have given the historical references here in order that, if possible, my learned friends might meet the statement that is made.‖

The Attorney-General—Would it not be convenient for my learned friend to answer now the way in which Mr. Mills treats these things?

Mr. MacMahon—I do not think it is necessary, because Mr. Mills puts the matter on a ground that could hardly be maintained. If he were to look at it now, he would

* [See note *, p. 279, *ante*.—G. E. L.]

† [Not to make a discovery, but to take renewed possession. The Intendant Talen writes to the Home Government in 1671: "As those countries having been long ago *(anciennement)* originally discovered by the French, I have commissioned the said Sieur de St. Simon to take renewed possession in His Majesty's name, with orders to set up the escutcheon of France, with which he is entrusted, and to draw up a *procès verbal*, in the form I have furnished him." (Book Arb. Docs., p. 105.)—G. E. L.]

‡ [See note *, p. 280, *ante*.—G. E. L.]

§ [This first post was abandoned, though afterwards re-established. It was established in usurpation of the rights of France, then in possession of the country of the Bay, though without military establishments on its shores, for which there was no necessity, as the trade was carried on by the Height of Land and the posts of the St. Lawrence. After the English had shown signs of continuing a permanent settlement at Fort Rupert, the French, as soon as circumstances permitted, despatched a military force overland, which effected its capture.—G. E. L.]

‖ [The statement is met, note †, p. 279, *ante*.—G. E. L.]

admit that there is not so much in his view as he thought there was at the time he wrote his report. In a note on page 129 Mr. Mills says: "An attempt has been made, on the strength of certain passages in the *Relations des Jesuites*, to throw doubt on the authenticity of certain of the occurrences mentioned in the memoirs of M. de Callieres and the Marquis de Denonville. It is not at all likely that either of these—the one being Governor of Montreal, and the other Governor-General of New France, having access to the official documents, and writing within a short time of the date of the events narrated—could by possibility be mistaken." Now, De Callières was writing twenty-one years after the events; Denonville was writing twenty-two years after them, and relying upon the very identical memoir that De Callières had written, and which he said there was not a document to support. If there was not a document on which they could rely, how is it possible that any reliance could be placed upon their statements just at that particular juncture, when it was necessary for them to find some argument upon which they could defend their having sent the French into Hudson's Bay and destroyed these forts? For in 1686 the Marquis de Denonville had sent two or three companies of Frenchmen to Hudson's Bay and taken three forts in one year; and it was necessary that they should account for these transactions to the Government of France. I will show that the Hudson's Bay Company were at that very time making representations to their Government in regard to the conduct of the French, and to the governors of the French. I think that this is all I need say in regard to Sieur Duquet's voyage. The fact of D'Argenson having left Canada two years before his order is said to have been given to Duquet, shows that the whole thing was, if not a fabrication, a mistake. I am not going to say that it was a fabrication; I am not called upon to account for it in any way; I am only called upon to point out that there is no authority for it; and the whole circumstances go to show that the transaction could not have transpired as it is set forth by the governors at that day. There has been an egregious error committed in some way. That order could never have been given, because we have the most unmistakable evidence that D'Argenson was not in this country then.*

When we come to the voyage of Albanel and St. Simon in 1671, which we admit was made, we find in a letter of M. Talon to the King, dated Quebec, November 2, 1671, these words: "Three months ago I despatched with Father Albanel, a Jesuit, Sieur de St. Simon, a young Canadian gentleman recently honoured by His Majesty with that title. They are to penetrate as far as Hudson's Bay, draw up a memoir of all they will discover, drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter." That is what they were to do; so that if the French Government of the day had prior to that caused visits to be made to Hudson's Bay in the way in which they pretend some years after that to state, all that knowledge and information would have been acquired, and there would have been no necessity for sending a priest there in order to make that discovery. If those statements of the earlier alleged voyages had not been made by the duly constituted authorities of the Government of the country, I think this is almost all the answer it would be needful to make. But Father Albanel says, at page 56 of the *Relations* for 1672: "Hitherto this voyage had been considered impossible for Frenchmen, who, after having undertaken it already three times, and not having been able to surmount the obstacles, had seen themselves obliged to abandon it in despair of success. What appears as impossible is found not to be so when it pleases God. The conduct of it was reserved for me, after eighteen years' prosecution that I had made, and I have very sensible proofs that God reserved the execution of it for me, after the signal favour of a sudden and marvellous, not to say miraculous, recovery that I received as soon as I devoted myself to this mission, at the solicitation of my superior, and in fact I have not been deceived in my expectation; I have opened the road in company with two Frenchmen and six savages." This shows that so far as the Jesuits were concerned, the pioneers of the country, they had never heard of anyone having penetrated to Hudson's Bay before them. The very letter that M. Talon was writing to the King shows that he had never heard

*[For the answers to these objections as to the reliability of the *mémoires* of Callières and Denonville, and the authenticity of the events related in them, see notes to the Dominion Case, pp. 278-280, *ante*.—G.E.L.]

of anything of the kind.* There is no doubt, therefore, that Albanel's voyage was the first effort successfully made to reach Hudson's Bay.

The Attorney-General—M. Talon says also in that letter to the King that those countries were originally discovered by the French.

Mr. MacMahon—That is the way in which these accounts were made up; but it is evident that the French had not been in Hudson's Bay, and did not know whether it would winter ships or not.

The Attorney-General—M. Talon says that he directed St. Simon to take *renewed* possession of it.

Mr. MacMahon—It was not necessary to take renewed possession if they were in possession already, as it is now claimed that they were. There is not a record in existence which will substantiate the claim then made as to former possession. In December, 1711, the Hudson's Bay Company presented a petition to Queen Anne, in which they set forth that the French, in time of perfect peace between the two kingdoms, in 1682, arbitrarily invaded the Company's territories at Fort Nelson, burned their houses, and seized their effects; that in the years 1684 and 1685 they continued their depredations; that in the year 1686 they forcibly took from the Company Albany Fort, Rupert Fort, and Moose River Fort, and continued their violent proceedings in 1687 and 1688, and the Company lay the damages at £108,514 19*s.* 8*d.* (Mills, 153.)

It is not my intention to take up the time of the Arbitrators in referring to the English discoveries. A series of them will be found at pages 4 and 5 of the Dominion Case. The voyages are those of Sebastian Cabot, in 1517; Sir Martin Frobisher, in 1576, 1577 and 1578; Hudson, 1608-10; Button, 1611; Luke Fox and Thomas James, 1631. Then we come to 1667 and 1668, when we find that Des Groselliers and Radisson (who it is supposed were *Coureurs des Bois*) were roaming among the Assiniboines, and were conducted by them to Hudson's Bay. These two men went to Quebec after their return for the purpose of inducing the merchants there to conduct trading vessels to Hudson's Bay. At page 280 of the Ontario Documents, we have the whole transactions during that period fully set forth by the Hudson's Bay Company just as they transpired. The proposal of Des Groselliers and Radisson was rejected, as the project was looked upon as chimerical by the Quebec merchants. Now, if Attorney-General Bourdon, the Attorney-General of the Province, had been there twelve or fourteen years before, and made known what his discovery was, and how he got there and returned from there, it would not have been stated by the merchants of Quebec that the project was chimerical.†

The Attorney-General—Nor did they state so. The document merely says that their project was rejected.

Mr. MacMahon—I will furnish the authority for stating that the project was looked upon as chimerical. I think you will find it in Mr. Mills' book.

Des Groselliers was in London in 1667, but before going there he had been in Boston and in Paris, endeavouring to get merchants to assist in reaching Hudson's Bay by ships. He wished them to fit out an expedition for that purpose, but they refused to join in the undertaking, and he then referred to the British Ambassador at the Court of Paris, who advised him to go to London. He went there, and those who afterwards obtained the patent from Charles II. to the Hudson's Bay Company, employed Des Groselliers and Radisson, with Gillam, who went there and built Fort Rupert in 1667 or 1668. Then Capt. Newland was sent out in 1669 by the same parties who sent out Gillam. So far as the Hudson's Bay Territory is concerned, the English were first, both as to discovery and occupation.

It is stated in Mr. Mills' book (and not denied) that as long as the English were not there the Indians came to Montreal and Quebec, and Three Rivers. The whole of the trade was done between Fort Frontenac (Kingston) and Quebec by the Indians themselves; and with the exception of the *Coureurs des Bois*, who went into the country some hundred miles, there was no pretence of the French having penetrated into the interior.

* [On the contrary, the letter claims that that country had long before been discovered and taken possession of by the French. (See the extract, note †, p. 340, *ante*.—G. E. L.]

† [See note *, p. 281, *ante*.—G. E. L.]

But as soon as the English commenced occupying the Hudson's Bay Territory; as soon as they were intercepting and taking possession of the trade that had formerly belonged to the French merchants, then those who were interested took steps to secure at Hudson's Bay the trade which the English were intercepting. The memoirs are full of statements as to the venality of those connected with the French Government in Canada. It is stated that the Governors-General themselves were in league with certain merchants and traders for the purpose of getting possession of as much of the trade as they possibly could, and that none except certain favoured individuals could get licenses from the Governors. The people stated themselves that they were persecuted by the emissaries of the Government, who sought to prevent them going into the interior; and thus the *Coureurs des Bois* were prevented from going into the interior of the country, and cutting off the trade which would otherwise have gone to Montreal, and which the officials were bound to participate in if they could. That is the reason why the French Governors here thought it necessary to send these memoirs to the Court of France.

Now, having found the English making discoveries, entering into possession, and building forts upon Hudson's Bay, the question suggests itself—a question which ought to be determined—what extent of territory the King of England, as represented by the Hudson's Bay Company or the discoveries of that Company—what extent of territory the King of England was entitled to by this discovery, possession, and occupation. I do not think there can be a doubt about it. Most of the authorities on the point are referred to on page 6 of the Dominion Case. It is laid down in Vattel that "navigators going on voyages of discovery furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by real possession." Here we have these people sent out under the sanction of the King and of Prince Rupert to make a discovery of Hudson's Bay. They did make that discovery, and entered into possession; and I am going to show to the Commissioners, no matter what the occupation was, that under the law of nations as interpreted then and since by the highest authorities, they were entitled to the whole of the lands watered by the streams flowing into Hudson's Bay and James' Bay; and more than that, it will be apparent that the Hudson's Bay Company and the English Government were claiming that the whole of these lands belonged to England. Vattel says also: "When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, etc."*

The next authority I shall quote is Phillimore. He says: "In the negotiations between Spain and the United States respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles (America said on this occasion) which are applicable to the case are such as are dictated by reason and have been adopted in practice by European Powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and at the same time founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other nations to the same. (*See* Mémoire de l'Amérique, p. 116.) It is evident that some rule or principle must govern the rights of European Powers in regard to each other in all such cases; and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have

*[France, long before the English had obtained a footing in Hudson's Bay, was, by consent of the natives, in possession of the sovereignty, and monopolized the whole trade up to the shores of the Bay. The country being unfit for cultivation or settlement, she could utilize this possession in no other way; but it was none the less an integral part of her Canadian dominion. Vattel lays down the rule that if a nation "has left uncultivated and desert places in the country, no person whatever has a right to take possession of them without her consent. Though she does not make actual use of them, those places still belong to her; she has an interest in preserving them for future use, and is not accountable to any person for the manner in which she makes use of them." (Vattel, Book 2, chap. 7, s. 86.)—G. E. L.]

destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principle is departed from it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European Power who discovered and took possession of a new country to the spot on which its troops or settlement rested—a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America.'" (Phillimore's International Law, 2nd ed., vol. 1, pp. 277-8-9.)

I wish to draw the Arbitrators' particular attention to this expression in regard to restricting the rights of European Powers, etc., to the spot on which troops or settlement rested, because in dealing with the Treaty of Ryswick, the argument has been advanced that all which was left to the English after that treaty were the settlements in the immediate neighbourhood of the fort or two then in their possession: that is, the territory immediately round about, and nothing more; although, as I will afterwards show, I do not think that the Treaty of Ryswick has anything to do with the discussion of this case. At page 223 in the discussion of the Oregon question, Dr. Twiss says: "In the negotiations antecedent to the Treaty of Utrecht, it was expressly urged, in support of the British title to the territories of Hudson's Bay, that M. Frontenac, then Governor of Canada, did not complain of any pretended injury done to France by the said Company's settling, trading, and building forts at the bottom of Hudson's Bay, nor made pretensions of any right of France to that Bay till long after that time."* (Anderson's History of Commerce, A.D. 1670, vol. 2, page 516.) He goes on to say: "In other words, the title which this charter created was good against other subjects of the British Crown by virtue of the charter itself." That is what Dr. Twiss lays down as a proposition which he says cannot be controverted—that as regards the title created by the charter, it was good against other subjects of the British Crown by virtue of the charter itself; so that in virtue of what has taken place within the last few years it must be good as against the Province of Ontario. He continues: "But its validity against other nations rested on the principle that the country was discovered by British subjects, and at the time of their settlement was not occupied by the subjects of any other Christian Prince or State; and in respect to any special claim on the part of France, the non-interference of the French Governor was successfully urged against that power as conclusive of her acquiescence."* That is laid down by Dr. Twiss,and it is a proposition which has been assented to by Phillimore in the quotation just read. The quotation which was made use of by my learned friend the Attorney-General from Twiss' *Oregon* was not attempted to be controverted by the English authorities at the time of the Oregon difficulty. Mr. Mills, at page 182 of his Report, says: "It can hardly be contended that because the Hudson's Bay Company had established certain posts and forts at the mouths of some of the rivers that empty into the Bay, they could rightfully claim all the country drained by those rivers and their tributaries. A pretension of this kind was put forward by the United States to the whole of Oregon, because of the discovery of the Columbia River by Captain Gray, but it was expressly repudiated at the time by Great Britain. No such rule is recognized by writers on international law." Now, the rule of law as recognized by international writers and Great Britain was different from that put forward by Mr. Mills. What was stated by Twiss and what is asserted here is, that it depended upon other considerations. Sir Francis Twiss, in his discussion on the Oregon question, at page 300, states that "Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, *i.e.*, upon her title by mere settlement, *but upon her title by discovery, confirmed by settlements in which the French nation, her only civilized neighbour, acquiesced, and which they subsequently recognized by treaty.*"† That is the ground upon which Dr. Twiss puts it, and it is the groundwork of the whole international law as stated by

*[Albanel and St. Simon's expedition of 1671 to take renewed possession, already referred to, was by way of protest against the Company's presence in the Bay. (Book Arb. Docs., p. 105.)—G. E. L.]

†[See note *, p. 282, *ante*.—G. E. L.]

Phillimore in the quotation that I have already read. The principle is stated in Vattel in the reference I have made; is fully recognized by Great Britain and the United States; and is fully assented to by Twiss and Phillimore.

In reference to the middle distance, my learned friend quoted from Twiss, 148. At 173 and 177, Twiss treats of this middle distance in regard to this very territory. He says: "Again, in the case of a river, the banks of which are possessed by contiguous States, the presumption of law is, that the Thalweg, or mid-channel, is the mutual boundary; since rivers are, in the case of the conterminous States, *communis juris*, unless acknowledged by them to be otherwise, or prescribed for by one of the parties. 'The general presumption,' observes Lord Stowell (in the Twee Gebroeders, 3 Rob., p. 339), certainly bears strongly against such exclusive rights, and the title is matter to be established on the part of those claiming under it, in the same manner as all other demands are to be substantiated, by clear and competent evidence.'

"A title by contiguity, as between conterminous States, would thus appear to be a reciprocal title; it cannot be advanced by one party, excepting as a principle which sanctions a corresponding right in the other. The practice is in accordance with this. Thus, the United States of America, in its discussion with Spain respecting the western boundary of Louisiana, contended that 'whenever one European nation makes a discovery, and takes possession of any portion of that continent (*i.e.*, of America), and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned (*i.e.*, actual possession of the sea coast), the middle distance becomes such a course.'" (British and Foreign State Papers, 1817–18, p. 328.)

Now, here we have taken possession of the sea coast, so that the question of middle distance, or reaching the territory by another route, cannot come in question at all; because, as contended by the United States and Great Britain in the discussion of this question, they have always claimed, and the Hudson's Bay Company have always claimed, that the territorial rights extended to the height of land on all sides;* and I will point out to the Commissioners that as early as 1709, before the Treaty of Utrecht, the Hudson's Bay Company were claiming on the east and south the very line that ran from Grimington's Island down through Lake Mistassinnie. Now, it is necessary to look at the Company's grant in different aspects. The charter will be found in Ontario Documents, 29, 30. What does the King grant to the Hudson's Bay Company under the name of Rupert's Land? First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, etc. Then the Company are created the "absolute lords and proprietors of the same territory, limits, and places," etc., etc., in free and common socage, with power to erect colonies and plantations, etc. So that here was a proprietary government created by the charter. You will see by the charter that the Company had the power to adjudge, to create colonies—the power to do everything, apparently, which any government ought to be called upon to do. And I refer to the fact of its being a proprietary government because it will be necessary to consider that in relation to the bounds which my learned friend the Attorney-General says could be created by the King, notwithstanding that the boundaries might have been limited by the Act of Parliament. The charter is very wide. Although Sir Vicary Gibbs, who gave an opinion in 1804, thought the charter void because it purports to confer upon the Company exclusive privileges of trade, he does not say anything about the proprietary rights; he does not say anything about the right of the King to grant a charter the same as was granted in Pennsylvania; he does not say anything about the right to make a territorial grant; he merely gives the opinion that the charter is invalid because it grants exclusive privileges of trade and thereby creates a monopoly, which they say the King could not grant without the sanction of Parliament.

The next opinion in point of time is that of Sir Arthur Pigott, Serjeant Spankie, and Lord Brougham, 1816; and the next one is that of Mr. Edward Bearcroft in 1818. In these two opinions they do not for a moment say that the charter is invalid, but they

* [On the contrary, Chief Justice Draper in his elaborate Memorandum of 6th May, 1857 (see *ante*, p. 37), came to the conclusion that "the claim to all the country the waters of which ran into Hudson's Bay, was not advanced until the time that the Company took the opinions of the late Sir Samuel Romilly, Messrs. Cruise, Holroyd, Scarlett and Bell," which was in 1812-14. The cases on which these opinions were given have never been produced.—G. E. L.]

say that the Crown had no right, and could not of itself create a monopoly, and therefore as to that part of the charter it might be invalid; but as to the rest of the charter, they say the only part of it to which a question could be raised was in regard to the extent of territory covered by the charter. I think I will be able to show the Commissioners that the charter was always considered by the British Government as extending to the full length asserted now by the Dominion, and as was asserted by England shortly after the Treaty of Utrecht.

The Attorney-General urged with a great deal of force that the opinions given by the law officers of the Crown in 1850 and 1857, were given upon statements furnished by the Hudson's Bay Company which were *ex parte*, and that, therefore, the Commissioners are not bound by these opinions. I do not pretend that Ontario is bound by any of these opinions; that is not asserted by the Dominion; but the Province of Ontario is put into a position which I think the Province is not able to escape from by the very fact of the proceedings referred to having been instituted, and that the law officers of the Crown stated at that time that the Hudson's Bay Company were entitled to everything that they claimed; and I am going to point out to the Commissioners what the claims were, and upon what these claims were based.

The claim as furnished by the Hudson's Bay Company will be found in full in Ontario Documents, 288-90. That claim was founded—upon what? Upon a document prepared by the Crown itself, and furnished to these very counsel as the title upon which they were to rely; and the law officers of the Crown, looking at that document, at the charter itself, could see for themselves, and were giving an opinion in regard to a legal document. The Company import into their statement a part of the charter, and set out by saying in the words of the charter what the King had granted them; and then they say that they "have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map." The map is an exact counterpart of what was used in 1857, and in that map is set forth all that they claim.

Chief Justice Harrison—Each time that they were called upon to give their claim, they appear to have extended their boundaries.

Mr. MacMahon—They were determined to claim enough, like my learned friend the Attorney-General, who started out with claiming the line of the Rocky Mountains. They furnished that claim to their grantors; they were furnishing that claim to the Crown, and it was submitted to the Crown officers, who gave an opinion in regard to it, and that opinion I have had copied in the Dominion Case, at page 7. It was given by Sir John Jervis and Sir John Romilly—of whom one became Chief Justice of the Common Pleas, and the other Master of the Rolls. In that opinion, which is addressed to Earl Grey, they say:—"In obedience to your Lordship's command, we have taken these papers into consideration, and have the honour to report that, having regard to the powers in respect to territory, trade, taxation and government, claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the chairman of that Company, we are of opinion that the rights so claimed by the Company do properly belong to them. Upon this subject we entertain no doubt." The Commissioners will see that that map is attached to the correspondence and papers; and all these papers were brought down in 1850 to the House of Commons on a return then ordered, and which shows the correspondence which took place between Mr. Isbister, who was representing those who felt themselves aggrieved—I do not know whether representing a Government or private parties.

Chief Justice Harrison—He was not acting for any Government—he was acting as an individual.

Mr. MacMahon—He was acting for some people who claimed to have rights in the Hudson's Bay; and the correspondence took place in respect to the charter, the extent of territory and the trade, taxation and government, as claimed by the Hudson's Bay Company.

Sir Edward Thornton—I should suppose that Mr. Isbister represented the people in Assiniboia—the dissatisfied people in the Red River Settlement.

Chief Justice Harrison—Yes; certainly he did not represent any Government. He was one of the first to rouse public opinion about the monopoly, both here and in England.

Mr. MacMahon—I showed the letters and papers attached to the map to the Attorney-

General, but we concluded that it was not necessary to have them printed, as part of them appear in the Ontario Documents. The letter I will now read is addressed to Mr. Isbister, dated April 30, 1850, and will be found at pages 12 and 13 of the Hudson's Bay Company's Documents:—

"Downing Street, April 30, 1850.

"Sir,—In answer to your letter of the 16th of this month, I am directed by Earl Grey to state to you, with as much distinctness as possible, since there appears to have been some misunderstanding on the subject, the course which Her Majesty's Government have adopted and propose to pursue relative to the charges against the Hudson's Bay Company. (2) In pursuance of the address of the House of Commons, praying Her Majesty to take such means as might seem most fitting and effectual to ascertain the legality of certain powers claimed by that Company, Lord Grey called on the Company for a statement of those claims, and laid it before the Attorney and Solicitor-General for their opinion. You are acquainted with their opinion, which was to the effect that the rights so claimed by the Company properly belonged to them. (3) They added a suggestion that yourself, or any other party dissatisfied with their opinion, might be recommended to prosecute complaints against the Company by means of a petition to the Queen, which might be referred to the Judicial or some other committee of the Privy Council. (4) This offer was accordingly made to yourself. You now appear to suppose that Her Majesty's Government, in making the offer, intended to defray out of the public funds the expense which must attend such an investigation. (5) This, however, Her Majesty's Government cannot consent to do. Having been advised by their own law officers that the claims of the Company are well founded, they cannot impose on the public the expense of proceedings which, in the opinion of their own regular advisers, will prove ineffectual. All that is in their power is to recommend that those who are dissatisfied with that opinion should pursue the course pointed out by the law advisers for questioning it, and to assist as far as they may lawfully do in having the question so raised brought to a legal determination. (6) But the expense of the steps necessary for this purpose must be borne by the parties who undertake them; and if none of those who have brought under the notice of Lord Grey, and of Parliament, their exceptions to the jurisdiction and power claimed by the Company, are willing to incur such expense, Her Majesty's Government must consider that there are no further steps which it is in their power to adopt for the purpose of ascertaining the legal validity of the claims of the Company."

Now, here was the British Government being advised by their own legal advisers that any steps they might take in order to test the territorial rights (which I suppose it was designed to test by anything that might go before the Privy Council) would be ineffectual; and at that early date Mr. Isbister, who was moving either on behalf of himself or somebody interested, was told that the Government would not assume the responsibility. And we are told in 1850 that the only way of testing the validity of that charter, or the extent to which the rights of the Company might be narrowed down, was by the legal interpretation to be put upon the charter by the Privy Council. Neither then nor in 1857 did Canada think it proper to test in any way—particularly as suggested by the law officers of the Crown on both of these occasions—the validity of that charter. Following that, there was further correspondence. In 1850, Sir John Pelly, who was then Governor of the Hudson's Bay Company, had written to Lord Grey. The following is an extract from his letter, dated at the Hudson's Bay House, May 31, 1850: "Permit me at the same time to state that the Company's ships for Hudson's Bay are appointed to sail on the 8th June, and that it would be of the utmost importance if the decision of the Privy Council, on the rights and privileges of the Company, were sent out by that opportunity, and the Government directed to issue a Proclamation agreeable to the tenor of the decision, which would in my opinion greatly tend to allay the excitement in which a portion of the half-breed inhabitants have been kept." Now, there the Governor of the Hudson's Bay Company invites Her Majesty's Government to have it decided, and to have the excitement allayed. The reply of Lord Grey will be found at page 8 of the Dominion Case. After pointing out what had been done, Mr. Hawes says that a petition to Her Majesty was suggested, and he goes on to say: "Such a petition was, therefore, essential to the complete prosecution of the

inquiry. Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's Territories, and had questioned the validity of the Company's charter, an opportunity to prefer the necessary petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the Address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law officers of the Crown in their favour to be well founded." Lord Grey at that time was Colonial Minister, and he, on behalf of Her Majesty's Government, was obliged to assume that the opinion of the law officers of the Crown in favour of the Hudson's Bay Company was well founded, and Her Majesty's Government refused to interfere any further with it, as they were perfectly right in doing.

Chief Justice Harrison—These questions, however, were all questions as to certain rights, more than questions as to boundary.

Mr. MacMahon—The trade, taxation and territory were all included.

Chief Justice Harrison—But the question as to the boundary really never came up, because the persons who were then attacking the Hudson's Bay Company said that the Company had no right to any part of the territory. If the question of boundary had come up, they must have looked to the Quebec Act and to these other Acts. But the question then was not a question of boundary at all; it was a question of whether the Company had any rights.

Mr. MacMahon—They were claiming certain rights, and a certain territory as being incident to or connected with those rights. The whole went together.

Chief Justice Harrison—There was no opinion from the law officers of the Crown as to the boundary.

Mr. MacMahon—The Company claimed those boundaries; their own position supplied boundaries. In 1857 the very same question came before Sir Richard Bethell, and, as reference has been made to the distinguished lawyers who gave opinions on the other side, I may say that I presume Sir Richard Bethell's opinion as Attorney-General would be authority as high as could be got from any source in regard to what was covered by the charter.

Sir Edward Thornton—I do not see that there can be the least doubt that the complaints made in 1850 were from Winnipeg, from the same people who were dissatisfied for a great number of years with the Hudson's Bay Company.

Mr. MacMahon—The question as to territory, as to that portion of the territory at least, must have got before the law officers of the Crown in some way.

Chief Justice Harrison—These people at Red River said the Hudson's Bay Company had no rights in any part of this territory, and the law officers were against them.

Mr. MacMahon—We have not the petition presented to the House of Commons, but if Mr. Isbister was acting on behalf of those who were known as the Red River settlers, and if he was their representative, then as far as regards the territory that they were disputing, as being controlled by the Hudson's Bay Company, when they had no right to control it at that time, that must have been a question the law officers considered, and in regard to which they gave an opinion.

Chief Justice Harrison—The Attorney-General, for the sake of this argument, admits that the Hudson's Bay Company had some rights, but that as a matter of boundary they did not extend to certain points.

Mr. MacMahon—The question of boundary must have been considered in regard to that territory, as to whether the Hudson's Bay Company were exercising rights outside of the boundaries that they were entitled to under the charter.

Chief Justice Harrison—The case was not put on that ground; the higher ground was taken that the Company had no right there at all.

Sir Edward Thornton—If I am not mistaken, the territory of Assiniboia was granted to the Earl of Selkirk. It is marked upon this map as the territory of Assiniboia.

Mr. MacMahon—Yes. In 1857—the Arbitrators will remember that that was after

a lengthened investigation had been gone into by the House of Commons—when Chief Justice Draper was acting as agent for Canada.

Sir Edward Thornton—That is the first time that Canada as a country appeared in the matter at all; I mean the late Province of Canada.

Mr. MacMahon—Yes. When Chief Justice Draper went to England as the agent of Canada, the whole matter as to the rights of the Company was supposed to have received very close attention by the home authorities, and the strongest possible arguments were adduced by the agent of the Province in order to curtail the rights of the Hudson's Bay Company, territorially; and at that time the law officers of the Crown, Sir Richard Bethell and Solicitor-General Keating, were asked for an opinion; the whole of which is in Ontario Documents, 200, 201. In that opinion they say,—"That the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment which has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts, both of the Government and the Legislature." In their statement of rights the Hudson's Bay Company say in 1850—"It may be right here to mention that although the original title to the territory and trade in question was derived under the charter above referred to, the rights of the Company have in various instances received the recognition of the Legislature."

Chief Justice Harrison—Just confirming what I said; the whole dispute was as to the rights of the Company, not the boundary.

Mr. MacMahon—They also say,—"It may be right here to refer to several Acts of the Legislature which have recognized the general rights and privileges claimed and exercised by the Company:—

"An Act passed in the sixth year of the reign of Queen Anne, c. 37, intituled 'An Act for the Encouragement of the Trade in America,' and this Act contains an express proviso that 'nothing therein contained shall extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Governor and Company of Adventurers trading into Hudson's Bay.'

"In like manner, in 1745, when an Act was passed (18 Geo. II. c. 17) for granting a reward for the discovery of a north-west passage through Hudson's Straits, it was expressly provided that nothing therein contained should extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Hudson's Bay Company."

One of the contentions in regard to the rights and privileges of the Hudson's Bay Company was that they had not fulfilled the intent of their charter—that they had not been making any endeavours to discover a passage to the North Pole; that if the charter was ever valid, they had forfeited it by not fulfilling certain conditions. I refer to that to show that during all that time their rights and privileges were being expressly accepted and held valid by these Acts of Parliament during the reigns of Anne and the Georges—so that they were not to be infringed upon in any way—and that they had been recognized up to the very day when Rupert's Land was surrendered by the Hudson's Bay Company to Her Majesty.

At this point the Arbitrators adjourned until ten o'clock the next morning.

SATURDAY, August 3rd, 1878.

Arbitrators and Counsel all present.

Chief Justice Harrison—Before the argument is proceeded with, I would state, without having any desire whatever to unduly hurry the argument, that if there is any probability of its being concluded by one o'clock or so, there is a prospect of the Arbitrators being able to agree this afternoon.

Mr. MacMahon—I will shorten my argument very much. Before commencing the regular course of the argument, I wish to refer to that matter of Radisson and Des Grosellieres. In the printed Case the word "chimerical" is used to express the way in which the merchants of Quebec looked upon the statement of these men. My learned friend the Attorney-General said that that was a statement of Mr. MacMahon's. I thought

that that statement would be found in Mr. Mills' book, but I see that I was mistaken in that; the statement is to be found in Harris' *Travels*, page 286, vol. 2 (reads the passage), so that it was not a statement of my own.

The Attorney-General—The authority is then less than that of my learned friend himself would be.

Mr. MacMahon—Not at all.

Chief Justice Harrison—The difference is that Harris is not an advocate.

Mr. MacMahon—Harris is about the best authority that we could get for the statement; his work was published in 1760.

I was referring the Arbitrators last evening to the opinion delivered by Sir Richard Bethell, afterwards Lord Westbury, and Sir Henry S. Keating, delivered in 1857 (Ont. Docts., 200, 201). It will be remembered that at the time the whole evidence, and all the correspondence that could be got together in regard to this question, had been submitted to the Committee of the House of Commons, and therefore the law officers of the Crown were fully advised of everything that could be brought to bear upon the subject; and I may say here, as the matter was referred to by the Hon. Chief Justice yesterday, that although, perhaps, the question of boundary did not come up as a square issue at that time, nor in 1850, still the question of boundary must have arisen incidentally when each of these opinions was given, so that the law officers of the Crown at that time were dealing incidentally with the question of boundary, and they could not avoid dealing with it in some way. They say:—"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the charter; but that, on every legal principle, the Company's territorial ownership of the lands and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations) ought to be deemed to be valid."

They likewise say,—"Nothing could be more unjust, or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." In another part of the opinion they say: "The remaining subject for consideration is the question of the geographical extent of the territory granted by the charter, and whether its boundaries can in any and what manner be ascertained." That is the question they were discussing. "In the case of grants of considerable age, such as this charter, when the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750." They refer to these three different periods as points of time in order to ascertain what ought to be the boundaries allowed to the Hudson's Bay Company in 1857, and show that the enjoyment under that charter, the assertion of rights under that charter, and the claims made by virtue of the charter, must and ought to be taken into consideration when dealing with the question; and the law officers, in giving their opinion, dealt with the subject in that view.

The Treaty of Ryswick I will only refer to very shortly. The Attorney-General, in his argument, referred to the forts that had been taken by the French, and to the effect of the Treaty of Ryswick in regard to the possession of these forts. But although the question is somewhat discussed at page 9 of our printed Case, I do not think it necessary that I should elaborate it at all, because in 1857 Chief Justice Draper, acting as agent on behalf of Canada, stated what was in effect in a very few words his view of the Treaty of Ryswick, and it was this: "The eighth Article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards."* (Ontario Documents, at page 240.) So that at the peace of Utrecht—and this is nearly the last stage in the argument—any rights that the French might or could have had were abandoned in 1713, and at one bound we get to what was the position of the Government of Great Britain and the Hudson's Bay Company at that time.

* [See note *, p. 38, *ante*.—G. E. L.]

It is stated that at a certain time, in 1700, the Company were willing to contract their limits, and the statement is made that because of that they were precluded at a later date from setting up that they were entitled under the charter to all that the charter could give them. What do they say in 1700—about the earliest date at which they made a claim after the Treaty of Ryswick? They say, "We are willing to contract our limits; but although we are willing to do that, we are entitled of right to the whole Bay and Straits of Hudson." This is like a man who has a suit of ejectment, who, in order to avoid the expense and trouble of a lawsuit, says, "I will be willing to allow you certain bounds, but if you do not accept that I will insist on getting all my rights and all that I am entitled to."

There was another statement made at that time to the Lords of Trade and Plantations in January, 1701, when the Hudson's Bay Company again "insist on their undoubted right to the whole Bay and Straits," but are willing to forego their rights to a certain extent if by that means they can secure a settlement. "But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it." (Ontario Documents, pp. 124-5.)

In May, 1709, the Company were requested by the Lords of Trade and Plantations to send an account of the encroachments of the French on Her Majesty's dominion in America within the limits of the Company's charter; to which the Company replied, setting forth their right and title, and praying restitution. (Mills, pp. 152-3.)

A further petition was sent by the Hudson's Bay Company to the Queen in 1711. (Ontario Documents, pp. 126-7.)

On February 7, 1712, the Hudson's Bay Company set forth what they desired should be stipulated for them at the ensuing Treaty of Peace. (Ontario Documents, 128.)

In this memorandum the Hudson's Bay Company ask "that a line be supposed to pass to the south-westward of Grimington Island, or Cape Perdrix, to the great Lake Miskosinke, *alias* Mistoveny, dividing the same into two parts (as in the map now delivered), and that the French nor any other employed by them shall come to the north or north-westward of the said lake, or supposed line, by land or water." I believe that the plan now produced is marked as having been prepared in 1709. I refer the Arbitrators to it. There is the Island of Grimington, and they ask that a line be drawn through that lake until it passes south of the 49th parallel; showing that at that time, in 1712, when they were presenting their petition to Queen Anne, that is what they were claiming as their rights at that time. I do not intend to refer to the question of post liminy at all, because the assent of Chief Justice Draper prevents the necessity of our having to discuss that question.* Now, Lord Dartmouth's letter after the Treaty of Utrecht, addressed to the Lords of Trade and Plantations on May 27th, 1713, will be found in Ontario Documents, 129. He says:

"My Lords and Gentlemen,—The Queen has commanded me to transmit to you the enclosed petition of the Hudson's Bay Company, that you may consider of it and report your opinion what orders may properly be given upon the several particulars mentioned. In the meantime I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that Court for delivering possession to such persons as should be authorized by Her Majesty to take it; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."

Now, the object of that will be seen when we consider that the whole course of these negotiations had been impeded by the French ambassadors claiming that the word "cede" should be used, whilst the English ambassadors refused to accept it with the word "cede"

* [There was no assent on the part of Chief Justice Draper to the view that there had been a retrocession in favour of the Hudson's Bay Company; and if there had been such assent, it would not be binding upon Ontario.—G. E. L.]

used at all; they insisted on the word "restore." They said that the territory was being restored to them, claiming that the French never were there, never had a right to be there, and therefore could not cede it, for it was not theirs to cede; but that having taken possession of a part of it in the time of peace, as claimed by the Hudson's Bay Company, the word "restore" was the proper word to use; and a great deal of correspondence took place between the ambassadors in regard to it. Under section 10 of the Treaty of Utrecht, the King of France was "to restore to the Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, coasts, rivers, and places situate in the said Bay and Straits, and which belong thereunto; no tracts of land or sea being excepted which are at present possessed by the subjects of France." In reference to the discussion just spoken of, Bolingbroke says, in March, 1713, that the truth is so evident, that the Plenipotentiaries of Great Britain at Utrecht always make a distinction between places that should be ceded and those that should be restored. (Bolingbroke's Correspondence, vol. 3, 601.)

Then we come to the question of the extent of country. Mr. Mills, who prepared this case for the Province of Ontario,* was compelled to admit that all was claimed for England under the Treaty which possibly could be claimed; and that is an admission which my learned friends cannot get over.

Mr. Mills, at p. 159 of his Report, after quoting the portion of the 10th section above referred to, says: "The words of the Treaty just quoted and the attendant circumstances, show that what was claimed by England and yielded by France was the Bay and the country upon its margin. Nevertheless, the language of the Treaty *did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the land's height.*† France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

Now, what was England doing from the very time of the passing of the Treaty, from the very time when Commissioners were appointed? I will show that she commenced to claim, and that she did claim in 1713, the restitution of these lands to the Company itself; because Lord Dartmouth says that the order was required so that the Company might be placed in possession; and England went on claiming to the very height of land, and she insisted that France should send her subjects out of that country, or prevent them from building forts or places whereby they could trade in the Hudson's Bay Territories. Although it is stated that Commissioners were appointed as provided by the Treaty, it was in some way assumed that the boundary had been settled at the 49th parallel. Everybody seemed to be impressed with the idea that the 49th parallel had been settled by the Treaty of Utrecht. In the United States this was urged. When the States were settling the parallel as to the northern boundary of Louisiana, it was claimed that the 49th parallel was settled at the Treaty of Utrecht, and that the United States, as the proprietors of Louisiana, were entitled to come up to that parallel as the territory of Louisiana. And in this country it was assumed: in a letter that will be found from the late Bishop Strachan to Lord Selkirk it is stated that the 49th parallel had been settled upon. In some way or other that seemed to be understood, and we find that many of the maps of very early date show that, as will be fully borne out by a reference to the list of the maps in the Ontario Documents. Many of these maps have the 49th parallel upon them as being the bounds between the English and French possessions under the Treaty of Utrecht. There is no doubt it was assumed at that time that that was the parallel; it was insisted upon by the United States and not denied by Great Britain. The law officers of the Crown in Great Britain at that time seemed to have the idea, whether derived from maps or from what source I do not know, but they appeared to have fully believed that the 49th parallel had been settled upon. The reason is, I suppose, because the Hudson's Bay Company always assumed that the height of land was their southern boundary; ‡ and Mitchell's map will show that the height of land was about the 49th par-

* [By this is meant Mr. Mills' revised Report, published some time previously. The "Case" of Ontario was prepared by the Attorney-General of the Province.—G. E. L.]

† [See note *, p. 287, *ante*.—G. E. L.]

‡ [See note *, p. 345, *ante*.—G. E. L.]

allel ; and therefore it was taken as if the 49th parallel was about the proper line to be drawn. Now, whether that was the case or not, whether it was ever agreed upon or not is of very little importance.

The Attorney-General—You admit that it was not, I suppose.

Mr. MacMahon—I admit that it was not. It was never decided upon, and in fact France never intended it. It is stated in Anderson's *History* that France never desired to settle the boundaries at all under the Treaty of Utrecht ; and it was only when she was compelled, after the war of 1759, that any settlement could be got. But it matters very little just now. If the Commissioners will look at the map attached to the Dominion Case, which was furnished at the time of the surrender of Quebec—and that is taken from the map that was sent over by General Amherst to the British Government, furnished to General Haldimand by the Marquis de Vaudreuil—they will find there what France was claiming. She never claimed anything beyond the Red Lake. There never was any pretence, as far as France was concerned, of claiming as Canada anything north or west of the Red Lake. That is what the Marquis de Vaudreuil at that time considered was the boundary of Canada upon the north and the west.*

(Some conversation took place over the maps, in the course of which Chief Justice Harrison pointed out that there were two Red Lakes.)

The Attorney-General—The Red Lake referred to by Mr. MacMahon is a little south of Turtle Lake.

Mr. MacMahon—It is hardly south ; it is more west than south. But for the purposes of my argument it does not matter, because I am addressing myself to that part of the argument of the Attorney-General which lays claim to all that north and west country as belonging to the French, and being part of New France. The map shows that there never was any such claim ; and the correspondence which took place with regard to the boundaries shows that after that map was delivered in 1761, France was claiming, as being part of Louisiana, a large part of the territory that was ceded as part of Canada —claiming it as being part of the Illinois country. The correspondence shows how anxious the French Government and the French Administration of that day was in regard to acquiring the territory south, or at least retaining the territory south, as part of Louisiana.

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt a memorandum upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus :

" Sur les limites de la Louisiana.

" Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une ligne qui s'étendra depuis Rio Perdido entre la Baye de la Mobile et celle de Pensacola, en passant par le Fort Toulouse chez les Alibamons, et qui, se prolongeant par la pointe occidentale du Lac Erié enfermera la Rivière des Miamis, et par l'extremité orientale du Lac Huron, ira aboutir à la hauteur des terres du côté de la Baye d' Hudson vers le Lac de l'Abitibis, d'où la ligne sera continuée de l'Est à l'Ouest jusques et compris le Lac Superieur." (Pub. Rec., Off. Vol. 483.)

Mr. Pitt, the Prime Minister of that time, states in an ultimatum which he forwarded to Mr. Stanley at Paris, the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil : " Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor-General surrendered, by capitulation, the said Province to the British general, Chevalier Amherst, comprises, on one side, Lakes Huron, Michigan and Superior ; and the said line, drawn from Lac Rouge, embraces by a tortuous course the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively until its confluence into the Mississippi." Then on page 8 of the Supplement will be found what was stated by the Duc de Choiseul, when the map was shown to him by Mr. Stanley. Mr. Stanley's despatch says : " The Duc de Choiseul complained that the bounds of Canada were laid down very

* [The correspondence (Mills, pp. 51-4) shews that Vaudreuil set no such limits. (And see note ‡, p. 288, *ante*.) Red Lake is in about the same longitude as Turtle Lake ; and it is notorious that the French not only claimed but were in actual possession long before this period of the whole region—as well to the west as to the east of this longitude—drained by the waters of Lake Winnipeg. (See Jefferys, already quoted, pp. 21-2, *ante*.)—G. E. L.]

unfavourably to France, in the description which your memorial contains, alleging *(sic)* that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated." (Minutes of a Conference at Paris, September 2nd, 1761. Pub. Rec., Off. Vol. 483, France.)

So that was the Province as understood both by the French and English at that time; and according to the claim made at that time, it had not any greater limits or any wider extent. In 1714 the Hudson's Bay Company sent a memorandum to the Lords Commissioners of Trade and Plantations, accompanied by a map in which they claimed that the eastern boundary should be a line running from Grimington's Island through Lake Miscosinke or Mistassinnie, and from the said lake by a line run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to the north of it, nor the English to the south of it. (Ontario Documents, 131, 132.) In 1719 Commissioners were appointed, and they set forth that "the French *since* the Treaty of Utrecht had made a settlement at the source of the River Albany; the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the fort, if there be any such building, shall be given up to the Company of English Merchants trading in Hudson's Bay aforesaid.

"The said Commissaries further demand that the subjects of His Most Christian Majesty *shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the Company* of English Merchants trading into Hudson's Bay, and to such Indians as wish to traffic with them."* (Ontario Documents, page 365.)

The Attorney-General stated that it was merely the freedom of the rivers which was required by the English Commissioners at that time. But Lord Dartmouth, in his letter to the Lords of Trade and Plantations, appeared to be anxious in regard to the property that the Hudson's Bay Company had acquired under their charter, and which he wished to be given back to them, in order that they might continue to occupy it.

The Attorney-General—That is not mentioned in the instructions that Lord Dartmouth gave; it was the notion of the Commissioners themselves.

Mr. MacMahon—The Commissioners, I suppose, were instructed.

The Attorney-General—We have their instructions.

Mr. MacMahon—This is the demand they were making. They were insisting that the French should not continue there, and that they should give up all their settlements, and not trade or build forts, and that they should cease to occupy this country altogether. The demand will be found in Ontario Documents, 365. Sir Travers Twiss says in regard to that: "By the 10th Article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, 'to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto; no tracts of land or sea being excepted which are at present possessed by the subjects of France.' The only question, therefore, for Commissaries to settle was the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain.†

"If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson indi-

* [See as to this the argument of the Attorney-General before the Arbitrators, *ante*, pp. 317, 318.—G. E. L.]

† [See note †, p. 288, *ante*.—G. E L.]

cate the line which at once satisfied the other conditions of the Treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lakes Mistassinnie and Abbitibis, the Rainy Lake, in 48° 30′, which empties itself by the Rainy River into the Lake of the Woods, the Red Lake, and Lake Travers."

These are the bounds that Sir Travers Twiss places on the rights of the Hudson's Bay Company, saying that all that extent of country to 48° 30′, at which the sources of these rivers commence, of right belonged to the Hudson's Bay Company under the Treaty, and that they could claim it, and were claiming it, under the Treaty of Utrecht. Now, speaking of Lake Travers, he says :—"This last lake would have been the extreme southern limit in about 45° 40′, whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about the 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson's Bay district ; and so we find that in the limits of Canada, assigned by the Marquis de Vaudreuil himself, when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior ; on the other, 'follows a serpentine course southward to the River Oubache, or Wabash, and along it to the junction with the Ohio.' This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September.* (Historical Memorial of the Negotiations of France and England from March 26th to September 20th, 1761, published at Paris by authority ; Twiss' Oregon Boundary, pp. 209-211.)

"By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head waters of the rivers emptying themselves into the Bay of Hudson ;† by the Treaty of Paris they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies ; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after the Treaty to the north-west of the sources of the Mississippi will be obvious when it is kept in mind that the sources of the Mississippi are in 47° 35′, whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Travers, in about 45° 40′." (Twiss' Oregon, p. 226.)

I have not referred to any of the maps, for the reason stated by Sir Travers Twiss, that it was an impossibility at that time to get any correct maps, few or no surveys having been made. In 1750—and that date is referred to in the opinion of Sir Richard Bethell and Sir Henry Keating—the Hudson's Bay Company were claiming as their bounds just what they were claiming in 1857. The claim of the Company in 1750 will be found in Mills, 176, 177 :—"The line to begin from the Atlantic Ocean on the east side of Grimington's Island, otherwise Cape Perdrix, in the latitude of 58½°, on the Labrador coast, and to be drawn from thence south-westward to the Great Lake Miscosinke, otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49° of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49° westward." So that they have been claiming that all along ; and, as stated by Sir Richard Bethell and his associates, that is what ought to be taken into consideration in viewing the question.

I think I have gone over the whole of the ground as far as regards the treaties, and I have shown that no part of that territory to the north and the west ever belonged to France, nor was it claimed by France at the time of the cession of Canada to Great Britain in 1760. In fact, the French wanted to contract the limits of Canada, and to claim as part of Louisiana the territory up to the line which in 1760 the Marquis de

* [See notes, §, p. 288, *ante*, and *, p. 353, *ante*.—G. E. L.]

† [See note †, p. 288, *ante*.—G. E. L.]

Vaudreuil had marked out as the limits of Canada; and there was no pretence, no claim of any kind made by France to the northerly and westerly territory,* when she could have made the claim if it was in her power to do so.

The other point is in reference to the Quebec Act.

Sir Francis Hincks—The learned counsel has been speaking for a long time upon the respective claims of the French and English. But it is an important thing to see what the English Government has done with regard to the boundaries of the Province since the whole territory became English. That is what we want to see particularly.

Mr. MacMahon—The Proclamation of 1763 created four separate governments—Quebec, East Florida, West Florida, and Grenada—and provided that all the lands not within the limits of these governments, and not within the limits of the territory granted to the Hudson's Bay Company, should be received for the present under the royal protection and dominion for the use of the Indians.

The Attorney-General—The old Province of Quebec is marked on Devine's map in accordance with the Proclamation.

Sir Francis Hincks—Then the boundaries marked on Devine's map are agreed to as representing that Proclamation?

Mr. MacMahon—Yes. I consider there is no point which turns on the Proclamation of 1763: we are both agreed as to the correctness of that. We come now to the Quebec Act of 1774, and that is where the first difficulty occurs, but I think I will be able to show to the Commissioners that there is no difficulty in deciding that question. If we look at the circumstances under which the Act was brought in, and take into consideration the statement, as made by the Attorney-General, of what the object of the Act was, and what the bill was as originally brought into the House, and how it was amended, we will easily see that the claim of Ontario in regard to the western boundary cannot be supported at all.

Assuming that the claim made by the Province of Ontario is the correct claim, what territory could they possibly acquire by taking the Red Lake—by running through the Red Lake, which is on the boundary there?

Sir Francis Hincks—I do not think you need trouble yourself about the Red Lake; that is not the point; it is the boundary to the north and west of Hudson's Bay; the question of the boundary running to Hudson's Bay.

Mr. MacMahon—I will confine myself to that altogether. If the Commissioners will look at page 77 of Mr. Mills' book, they will find the clause of the Act as originally introduced; and I would draw special attention to it, in order to show what was the design of the Legislature at that time in settling the western boundary of the Province. It reads in this way, "Be it enacted, that all the said territories and islands and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the river Ohio, and westward to the banks of the Mississippi." Well now, the House of Commons, or the committee of the House of Commons, at that time understood that if the description of the Act read in that way, when once the river Ohio was reached the use of the word "westward" would make it on a due west course to the river Mississippi.

Sir Francis Hincks—I think you do not appreciate our difficulty. You are still at the westerly boundary. It is the northerly boundary we want to get at.

Mr. MacMahon—You are not troubled about the westerly boundary?

Sir Francis Hincks—Not so much as the northerly. Whatever the westerly boundary line may be, there is no doubt that it runs northerly until it reaches the southerly boundary of the Hudson's Bay Company. We want to know what the southerly boundary of the Hudson's Bay Company is.

Mr. MacMahon—In 1703, 1750, and 1857, the Hudson's Bay Company were claiming that the height of land was the southern boundary of their territory. They always claimed that.†

Sir Francis Hincks—What you have got to deal with is whether any Acts of Par-

* [See note *, p. 353, *ante*.—G. E. L.]

† [See note *, p. 345, *ante*.—G. E. L.]

liament, proclamations, or commissions to Governors, established other boundaries. You are aware of the points in that branch of the case. Some of the commissions, for instance, expressly say "to the shore of Hudson's Bay."

Mr. MacMahon—Then, dealing with the question of the commissions. First we have to look at the Constitutional Act of 1791, because it is asserted that the Proclamation of 1791 enlarged the boundaries of what was previously the Province of Quebec. The Act of 1791 does not itself give boundaries, but the Proclamation follows and gives boundaries. My learned friend says it does not matter whether the boundaries were extended by the commissions into the Hudson's Bay Territory or not; that that is not a question for the consideration of the Arbitrators; but I say that it is. The Hudson's Bay Company had a government of their own under the charter as it existed, and the King could not of his own mere motion take from them the proprietary government, that which had been granted to them by the charter, unless they had forfeited the charter in some way.

Chief Justice Harrison—That is assuming that the charter gives them definite boundaries.

Mr. MacMahon—What took place by the acquisition of Rupert's Land, by the Rupert's Land Act, must define the boundaries as far as Great Britain and as far as the Hudson's Bay Company are concerned; and when we come to look at what was being stipulated for by the Hudson's Bay Company under that Act, and the surrender made in consequence of the Act, we shall find exactly what the British Government were doing and assenting to only ten years ago.

Chief Justice Harrison—What are the boundaries in the Proclamation under the Act of 1791?

Mr. MacMahon—The boundaries under that Act have received judicial interpretation.

Chief Justice Harrison—We want to give them an interpretation.

Mr. MacMahon—The Proclamation will be found in the Ontario Documents, 27; and I may say here that the whole trouble results from the use of one word, and it is upon that the Province of Ontario are building their right to go to the west and north of what was the Province of Quebec. The last word in the first clause of the proclamation is "Canada," when it should have been "Quebec."* It is altogether in relation to that word; and before we know anything about what was comprised in Canada, we have to ascertain what was comprised in the limits of Quebec; that is, if the Commissioners think it proper that I should discuss what was proposed in the Act of 1774. That is what I was doing when Sir Francis spoke of the boundaries under the Acts of the Government as by proclamations, commissions, etc. I considered it necessary to argue that point under the Act of 1774, in order to show that the use of that word in the Proclamation of 1791 was a mistake.

Sir Francis Hincks—Refer to that, please.

Mr. MacMahon—I say that the Act of 1791 in all its provisions is merely for the purpose of dividing the Province of Quebec, and that the use of the word Canada in the Proclamation was simply a mistake. The commission to Lord Dorchester in 1791 will be found on page 48, Ontario Documents; that is the first commission issued after the Act; it issued certainly before the Proclamation. But the commission that was issued in 1796 speaks of the Province of Quebec; it does not speak of Canada at all. The third paragraph of Lord Dorchester's commission is this:—"And whereas, we have thought fit by our order made in our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of

*[There is no authority for the assumption that the word should be "Quebec." The word "Canada" was used not only in the Proclamation, but also in the Royal Message to Parliament in 1791, referred to in the Act and Order in Council of that year. The same word "Canada" was also used in the Proclamation of Lieutenant-Governor Simcoe, dated 16th July, 1792, dividing Upper Canada into counties.—G. E. L.]

north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottowas River, to ascend the said river into the Lake Tommiscanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands, lying to the westward of the said line of division, as were part of our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of our said Province of Quebec."

Now, if we are to consider the Quebec Act and the Commissions under it, it is necessary to understand what was comprised in the Province of Quebec under that Act; and it was for that purpose I was referring the Commissioners to what took place on the introduction of the Act in 1774.

Sir Francis Hincks—That is very important.

Mr. MacMahon—The Quebec Bill, as introduced into the House of Lords, contained these words—"Be it enacted, that all the said territories, islands and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi," etc. I stated that that would mean, from the point at which the line struck the Ohio, a due west course until it reached the Mississippi. What do we find was done in regard to that? The Legislature felt that that was the interpretation which would be put on these words, and they made an amendment. The amendment will be found in Cavendish's debates on the Act. They made this amendment, "Until it strike the River Ohio, westward to the banks of the Mississippi." But they inserted after the word Ohio, "And along the banks of the said river," showing that they intended that the bank should be followed. And if the Commissioners read the whole of that Act, they will see that in every instance the phrase "Along the bank of the river" is used.

The Attorney-General—The Act only professes to describe the south line.

Mr. MacMahon—But when it comes to the junction of the Mississippi and Ohio it describes it in another way, showing that the eastern bank of the Mississippi was not intended by the Legislature at that time to be the eastern boundary of the Province of Quebec. If they had intended that, an amendment would have been made, as was made in regard to the Ohio; they would have put "northerly, along the bank of the Mississippi," just as they did "westerly along the bank of the Ohio." But when it came to the junction of the Ohio and Mississippi, they said "northward;" and it is alleged that because they used that word "northward," it must mean northerly along the banks of the Mississippi River, because a commission was issued to one of the Governors containing in it words to that effect. But the commission of 1796 describes what was intended to be contained as the territorial jurisdiction of the Governors, and contains no such words.*

In looking at De Reinhardt's case, it will be found that the whole of that question was very elaborately argued.

Sir Francis Hincks—Yes, we understand the whole of that question. You will see that there is a line drawn in this map of Devine's, professing to be the boundary according to the commission to Lord Elgin.

The Attorney-General—That is the last commission. The other commissions were substantially in the same terms. One set of commissions says "shore," and the other set says "boundary line" of Hudson's Bay.

Sir Francis Hincks—The Proclamation of 1791 says, "until it strikes the boundary line of Hudson's Bay." Now, what is the boundary line of Hudson's Bay?

Chief Justice Harrison—Can you strike the boundary line of Hudson's Bay without going to the shore?

Mr. MacMahon—It is not the Bay which is meant, it is the territory.

* [The Commission of 1786 or that of 1791 is probably meant. In neither of these could the words in question have properly found place, the Mississippi having passed from the British under the Treaty of 1783.—G. E. L.]

Chief Justice Harrison—That is the point we want you to address yourself to. It is a very important point.

Mr. MacMahon—The commission to Lord Dorchester in 1791 says, "until it strikes the boundary line of Hudson's Bay." (Ont. Docts., 48.)

Sir Edward Thornton—The Proclamation of 1791 follows that very commission. The wording is the same—"the boundary line of Hudson's Bay."

Mr. MacMahon—The boundary line of Hudson's Bay cannot be anything but the boundary line of the territory, because the King had no authority, no right, under a Proclamation, to enter upon a territory granted to the Hudson's Bay Company for the purpose of governing.*

Chief Justice Harrison—Of course that is all based upon the assumption that it had been granted. All these proclamations throw light upon the question of whether it had been granted or not.

Mr. MacMahon—They show afterwards how the territory was dealt with, and I will come to that question now.

Sir Francis Hincks—They repeat the expression in 1796, five years later—"the boundary line of Hudson's Bay."

Chief Justice Harrison—All the commissions follow that, down to 1838.

Mr. Hodgins—And then, from that down to Lord Elgin's, the language is "strikes the shore."

Mr. MacMahon—Between those dates they understood that there was a difference between the shore and the boundary line.

Sir Francis Hincks—You will observe that the commissions still use the words "due north." In the old commissions the language is "due north to the boundary line of Hudson's Bay;" but afterwards the commissions say—still following the expression "due north"—expressly "to the shore of Hudson's Bay," but which rather conveys the idea that they interpreted the boundary line of Hudson's Bay and the shore of Hudson's Bay to be the same thing.

Sir Edward Thornton—They improved the English a little in that.

Mr. MacMahon—The Proclamation is void to a certain extent; it has gone too far. I will show the way in which the Government have dealt with the Hudson's Bay Company in regard to this very territory. I say that where there is a proprietary Government such as the Hudson's Bay Company was admitted to be—and the British Government have always dealt with the Company as such—neither the Proclamation nor the Act of Parliament could take away the rights of the Hudson's Bay Company in any way; the only way to do so, if the Company had forfeited their charter, would be to bring them into court; and that is the course which in 1859 the law officers of the Crown advised should be pursued if the Company had committed any acts by which their charter ought to be forfeited or abridged in any way. In the case of Campbell *v.* Hall, in 1 Cowper, 204, cited in Forsyth's Constitutional Law, 401, it is laid down by Lord Mansfield that there cannot exist any power in the King exclusive of Parliament.

Chief Justice Harrison—That depends entirely upon the territory where the power is exercised; if there is no Parliament, there is no power to limit the King's authority. There was no Parliament in the Hudson's Bay Territory.

Mr. MacMahon—I cite also the case of Payne against Lord Baltimore, 1 Vesey, 444. That and the case of Campbell and Hall, together with a case in 12 Peters, the State of Rhode Island against the State of Massachusetts, have decided that where there is a proprietary Government existing there is no authority, unless by proceedings under a *sci. fa.* to take away the territory or to assume any government over it; so that after the grant was made, and confirmed by all these Acts of Parliament, the King had no authority or power to take away the rights of the Hudson's Bay Company that existed.

Chief Justice Harrison—Of course that is assuming one of the things which has been argued before, as to the rights, if any, of the Hudson's Bay Company, south of

* [Ontario contends that the territory through which this line passes was not covered by the Charter, or, if it was, that the Crown, which made the grant under its prerogative, could, by virtue of the same prerogative, modify or change it.—G. E. L.]

Hudson's Bay, and to what extent north. That is one of the points in controversy. All these documents throw light upon it.

Mr. MacMahon—My learned friends do not claim that they are entitled to any land north of the height of land.

The Attorney-General—I thought I had occupied a good deal of time in showing that I was claiming that.

Chief Justice Harrison—I understood the Attorney-General to claim to the Arctic Ocean.

Mr. MacMahon—I did not know that he meant that.

Sir Francis Hincks—Do I understand that you have no difficulty about the northern boundary?

Mr. MacMahon—The northern boundary is of no great consequence: the trouble is with the western boundary. Then came the Act of Union in 1840, and we will see what was the boundary under that. The first commission to Lord Sydenham is dated August 29, 1840. By that commission, after the line reaches Lake Temiscaming, it is "due north from the head of the said lake until it reaches the shore of Hudson's Bay, and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake Saint Francis, the River Saint Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara which falls into Lake Erie, and along the middle of that lake; on the west by the Channel of Detroit, Lake Saint Clair, up the River Saint Clair, Lake Huron, the west shore of Drummond Island, that of Saint Joseph and Sugar Island; thence into Lake Superior."

I think you stop there; it just takes you where the due north line of 1774 would strike, and shows that Upper Canada is bounded by that northern line running from the junction of the Ohio River to that point in Lake Superior which would be intersected.*

The Attorney-General—The commission does not say that.

Mr. MacMahon—No, but that is declared to be the whole extent of Canada in 1840, and all that was claimed for it by the British Government.

Chief Justice Harrison—Yet that same commission draws a dividing line between the two parts of Canada, Upper and Lower—a line running due north from Lake Temiscaming to the shore of Hudson's Bay.

Mr. MacMahon—Yes, that is a description in that commission—that wrong reading appears to have got into it in some way or other—but no matter what the commission was, the King had no right to draw that line as against the Hudson's Bay Company, if we satisfy you that the Hudson's Bay Company's Territory extended south of the Hudson's Bay to the height of land. The commission that was issued to Lord Elgin in 1846 is somewhat similar: "Thence into Lake Superior." Lord Elgin left in 1852 or 1853; showing that up to that time the jurisdiction of the Governors-General of Canada ended on the shores of Lake Superior, and must have ended just about at the point where the due north line strikes. The Province of Canada afterwards bought from the Indians the territory south of the height of land. I have argued the question about as fully as I can, in regard to the commissions, and in regard to the extent of territory under the jurisdiction of the Governors in 1840, and down to the last commission issued to Lord Elgin in that year, and up to the time he left in 1852 or 1853. The British Government must have been aware at that time where a line drawn from the junction of the Ohio and Mississippi Rivers would strike in Lake Superior, and no doubt they intended Upper Canada to be included within that line.*

We come now to Confederation. The 146th section of the British North America Act is as follows:—

"It shall be lawful for the Queen, by and and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the union; and on addresses from the Houses of the Parliament

* [See note *, p. 294, *ante*.—G. E. L.]

of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the union on such terms and conditions, in each case, as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ont. Docts., p. 404.)

After or about that time the agents of the Government of Canada went to England and made representations in regard to the expenditure of some $20,000 which the Government of Canada thought proper to expend on roads in the territory of Hudson's Bay. In the letter that was addressed to the British Government—by Sir Stafford Northcote, I think, who was then the Governor of the Company—he complained, on behalf of the Company, of trespasses having been committed by the Canadian authorities; and although the Canadian authorities denied that they were committing any trespass whatever in going to the Red River country, still they stated that the people there were in a starving condition, and that as an act of humanity alone the Government was prompted to make this expenditure, so as to give the people employment. That correspondence shows conclusively what was being asserted on the one hand by the Canadian authorities, and being denied by the Hudson's Bay Company on the other—denied with all the force which could be given to a denial. The result was that the British Government, by whom this charter to the Hudson's Bay Company was granted, or at least confirmed—because they did confirm it in effect, if not in express words, by stating in the numerous Acts of Parliament from 6 Anne to 48 George the Third, c. 138, that all the rights and privileges of the Hudson's Bay Company should be respected—the result was that the British Government took legislative action. What do we find them doing? We find that an Act, known as the Rupert's Land Act, was passed in 1868, after the presentation of an address from the Senate and House of Commons of Canada on Dec. 17, 1866 (Ont. Docts., 404 to 407). What was the agreement between the parties to this transaction? It is necessary to understand what was being surrendered, because the fact of the surrender, and the acceptance of that surrender by Her Majesty, was a confirmation of everything that the Hudson's Bay Company had been claiming under their charter; and that is a point which I am sure the Arbitrators will not lose sight of in dealing with this question. The surrender itself, the Act of Parliament itself, the agreement which was come to, not only between the British Government and the Hudson's Bay Company, but between the Canadian authorities,—these all prove the same thing. Under paragraph No. 5. of the Hudson's Bay Company's Deed of Surrender, "the Company may, within fifty years after the surrender, claim in any township or district within the fertile belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out," etc. (6) "For the purpose of the last Article the fertile belt is to be bounded as follows: on the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them." Now, here are the boundaries of the fertile belt, and there can be no mistaking them. Under the second section of the Rupert's Land Act, it is declared that, for the purpose of this Act, the term "Rupert's Land" should include the whole of the lands and territories held, or claimed to be held, by the said Governor and Company. So that all that land which in 1719 and 1850 the Company were claiming, the British Government admitted that they had a right to; and the Dominion accepted the surrender of all that.

Chief Justice Harrison—Of course the British Government, when accepting the surrender, were willing to accept a surrender not only of all that the Company had, but of all that they claimed to have.

Mr. MacMahon—The Company claimed the fertile belt, and were allowed to participate afterwards in its lands as their own; they were allowed to hold lands there.

Mr. Hodgins—The same as squatters on Crown lands.

Mr. MacMahon—They claimed it as lords of the soil, as entitled to the domain. The Commissioners will see from the map of 1850 what they were claiming. They were claiming down to the 49th parallel, and when they came to the height of land again they went north, showing that they were claiming all that extent of territory to the height of

land at the very last moment. Ontario, as a part of the Dominion, knew of all that was going on; knew that the Dominion was entering into these negotiations; but she sat by, and never said a word—never said, "No matter what you do, we are going to claim this land." They said nothing, but agreed that all this should be surrendered. It was surrendered, and paid for by a million and a half of the Dominion's money, and the surrender was accepted by the Dominion and British authorities as being a part of what was granted to the Hudson's Bay Company. It does not matter whether the Company had a right to it or not—they were claiming it, and claiming to be paid for it; and there is where I say that the Province of Ontario can have no right now to claim any portion of that land that was surrendered—to claim it as being part of the Province. If she had a right to claim it, then was the time to intervene, and say, "This is part of our Province, and if you accept the title to that land you do so at your peril." I need not quote the numerous authorities in support of the proposition as to the Province now being excluded.*

The Attorney-General—I should like very much to see them, if there are any.

Mr. MacMahon—I cite Story's Equity, sec. 1,546. "In a late case before the House of Lords, on appeal from the Court of Session in Scotland, the Lord Chancellor discusses this question of estoppel in fact, or acquiescence in adversary's claim of right, somewhat in detail. He is reported thus: 'It is a universal law that if a man, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct;' and again: 'If a party has an interest to prevent an act being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had it been done by his previous license.'"

Chief Justice Harrison—That is quite clear as between individuals; can you show us that that is part of the law of nations?

Mr. MacMahon—I do not think that the Province can possibly stand in a better position than an individual.

Chief Justice Harrison—One nation is not bound by what two other nations do, unless the third nation is a party to what is going on.

Mr. MacMahon—Ontario is a part of the Dominion.

Chief Justice Harrison—It was no party to these negotiations.

Mr. MacMahon—No.

Chief Justice Harrison—Then the arrangement was something that took place between other parties that were strangers to the Province.

Mr. MacMahon—The Province is part of the Dominion; and, knowing that the Dominion was acquiring rights from the Hudson's Bay Company, if the Province had any claim to that territory they should have made the claim then, when the matter was about being settled. The instructions subsequently (1871) given to the Commissioner on behalf of the Dominion, when it was proposed that the boundaries should be settled, will be found on page 20 of the Dominion Case, from which I will read an extract:—

"1. The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., ch. 83, known as the 'Quebec Act,' and is described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio '*westward to the banks of the Mississippi*,' the description continues from thence (*i.e.*, the junction of the two rivers), '*and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*'" Now, what the territory of the Merchants Adventurers of England trading to the Hudson's Bay was, has been fully set forth by them; and, although on the side of the Province of Quebec the line of the Province of Quebec may have struck the shore of Hudson's Bay, still that has nothing to do with this western limit. It can have nothing to do with that, because

* [See the Attorney-General's remarks before the Arbitrators, in reply, *post*.—G. E. L.]

on the western limit there is no line at all named; and Ontario may get as much from the Province of Quebec, on the easterly side, as they can.

My learned friend, Mr. Monk, will follow me; and if there is anything that strikes me after my learned friend the Attorney-General has replied, perhaps the Arbitrators will allow me a few words.

Argument of Mr. Monk.

Mr. E. C. Monk, of the Quebec Bar, followed, on behalf of the Dominion.—I have great difficulty in adding anything to the able and exhaustive argument of my friend and colleague, Mr. MacMahon. I shall limit myself as briefly as possible to a reference to some of the portions of my learned adversary's case upon certain points which, to say the least, are well open to controversy. I find on the third page of his case—and I know that he laid great stress upon it in addressing the Commissioners—a letter written by Sir George E. Cartier and Mr. McDougall to Sir F. Rogers. I find on the fifth page of the Case the following in reference to this letter:—"Ontario claims that the official views of the Government of the Dominion, as thus expressed, should *prima facie* be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded." The second assertion in this letter is that the charter of the Hudson's Bay Company "expressly excluded all lands, etc., then possessed by the subjects of any other Christian prince or state;" and the next paragraph states that "by the treaty of St. Germain-en-Laye (1632) the King of England resigned to the King of France the sovereignty of Acadia, New France and Canada generally, and without limits." That, I submit, is unfounded. The Treaty of Ryswick is quite different in its terms. The word "resign," or "give up," is not a correct translation for the French version of it as I find it in the Treaty of St. Germain at page 11 of the Ontario Documents. The French words inserted between brackets there are "rendre" and "restituer"—to give back or restore—implying unquestionably a previous possession on the part of France of these territories. New France, Acadia and Canada could not have included Hudson's Bay. The Hudson's Bay territories were never in the possession of France at that time, and, as Mr. MacMahon has established, were not even known or discovered in 1632 by the French.*

The Attorney-General also laid particular stress on the memoir of M. De Callières, and I may therefere be allowed to refer the Commissioners to a few notes that I have made on the subject. The first French voyage alluded to by Mr. Mills is that of Attorney-General Bourdon, and Mr. Mills makes the statement upon the authority of a memoir from Sieur De Callières to the Marquis De Seignelay and another memoir from the Marquis De Denonville. This memoir says that in 1656 Jean Bourdon, the Attorney-General of Quebec, explored the entire coast of Labrador and entered Hudson's Bay; and this M. De Callières says is proved by an extract from the ancient registry of the Council of New France of 1656. Jean Bourdon was a man thoroughly well known in the Province—better known, no doubt, in that part of the country than would be the Attorney-General of the Province to-day—and was a man with whom the Jesuits were on intimate terms, and who is mentioned on almost every page of the *Relations* written at that time. Yet, notwithstanding these facts, no mention whatever is made in the *Relations des Jesuites*—and I have read them over with care—no mention whatever is made of Jean Bourdon's voyage to Hudson's Bay. At page 9 of the *Relations* for 1658, mention is made of an attempted journey which Bourdon made with the intention of reaching Hudson's Bay. Under date of August 11th, we find an entry in which the Father Jesuit, who is reported as keeping the journal at that time, says that the barque of M. Bourdon returned. We have in the *Relations* no particular date of Bourdon's starting on this voyage; but in the *Journal des Jesuites*, pages 209-218, the Commissioners will find that he left in the middle of May in the same year. He returned on August 11th; and, as is not controverted, it would have been perfectly impossible for him to have made the voyage

* [On Champlain's map of that year, 1632, Hudson's Bay and Straits and the adjacent territories, together with the water communication between the Bay and the St. Lawrence, by the Saguenay and Rupert Rivers, are correctly delineated. (See Book Arb. Docs., p. 135.)—G. E. L.]

to Hudson's Bay in so short a time. But the learned counsel stated that there was no reason why this particular voyage should have been the one mentioned by De Callières. The voyage to which I refer was made in 1657; the extract from the register to which De Callières refers is dated 1656; clearly indicating that what De Callières took as evidence of a voyage having been made was simply an order, an instruction given by the Council to Sieur Bourdon to attempt this voyage.* There can be no doubt whatever that the *Relations des Jesuites*, whatever may have been said of them since, were the only correct record which was kept of the early doings of the colony, and there can be no doubt whatever that had Sieur Bourdon in 1656, as is claimed, made a voyage of this kind, a record of it would have been kept, as I propose to show in a moment. The next voyage to which M. De Callières refers in his memoir is that of Father Dablon, a Jesuit, who in 1661, as Mr. Mills states in his Report, was ordered by Sieur D'Argenson, Governor of Canada, to proceed to the country about Hudson's Bay. It is stated that Dablon went there with Sieur De Valliere, and that the Indians who came back with them to Quebec declared that they had never seen any Europeans there before. Mr. Mills, in a note on the next page, 127, explains the *Relations of the Jesuits* not mentioning Bourdon's voyage by the assertion that they were naturally anxious that members of their own society should be the pioncers in discovery, and that therefore many important discoveries were never brought to light in their *Relations* because they were not made by Jesuits. Of course an argument of this kind cannot apply to the voyage of Dablon, as he was a Jesuit, a man in whom the interests of the society were centred; and if a voyage had been made by him, no doubt a great deal of prominence would have been given to it. On the contrary, in the third volume of the *Jesuit Relations*, 1662, we find this Jesuit, Father Dablon, describing an unsuccessful voyage that he made. There can be no doubt that he attempted a voyage. A portion of this relation is written by himself, and he calls it, "Journal du Premier Voyage Fait Vers la Mer du Nord." This first portion of it is most important and conclusive as showing that De Callières, in his memoir to M. De Seignelay twenty-one years afterwards, must have been speaking from hearsay, and without any authentic documents on which to base his assertions. Dablon says that the highest point which he did reach was Nekauba, a hundred leagues from Tadousac, and that subsequently he returned; and this is from a report of this journey written by himself. I noticed that the Attorney-General attempted to raise a doubt as to the identity of the Dablon in De Callières' memoir with the Dablon of the *Relations des Jesuites*. I have examined with care, and I find at the end of one of the volumes a complete list of all the Jesuits, pioneers both of the faith and in the way of discovery, and I find that there is only one Dablon mentioned. Another inaccuracy of this memoir is as to the trip of Duquet, under an order said to have been given by Sieur D'Argenson. There can be no doubt that at the time this pretended order was given D'Argenson had left Canada. The Attorney-General must admit now, although he attaches so much importance to this memoir, that it is inaccurate in most important particulars: first as to the voyage of Bourdon, which is shown never to have taken place at all; next as to the voyage of Dablon, which is shown also not to have taken place; then as to the trip of Duquet, under the special instructions of a Superior who could not have given them since he had left the country two years before.†

My learned friend has attached a great deal of importance, apparently, to the fact that in 1627 a Charter had been granted by Lonis XIII. to a number of adventurers sent to discover new lands to the north of the River St. Lawrence. But my learned friends have omitted to verify the fact that in this Charter to the French Company, which the Commissioners will find in the first volume of *Edits and Ordonnances*, at page 6, the only portions of land granted to the French Company are the lands or portions of lands which had already been occupied by the Kings of France, and the object of the Charter was simply to give them an exclusive right of trade therein. The clause of the Charter reads as follows:—" Le fort et habitation de Quebec, avec tout le pays de la Nouvelle France dite Canada, tant le long des Côtes depuis la Floride que les predecesseurs Rois de Sa

* [See note *, p. 278, *ante*.—G. E. L.]

† [See as to these several expeditions the notes pp. 278, 279, 280, *ante*.—G. E. L.]

Majeste ont fait habiter en rangeant les Côtes de la Mer jusqu'au Cercle Artique pour latitude, et de longitude depuis l'Ile de Terreneuve tirant à l'ouest au Grand Lac dit la Mer douce et au delà que de dans les terres, et le long des Rivières qui y passent et se dechargent dans le fleuve dit St. Laurent, ou autrement la grande Rivière du Canada, et dans tous les autres fleuves qui se portent à la mer;" thereby clearly indicating that the Charter did not go further than the land occupied by the predecessors of Louis XIV.* In the Case for the Province it is stated at page 3, "La Nouvelle France was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove." This is a broad assertion, which is not supported by the early discoverers nor by the historians of that time. Charlevoix described New France as being an exceedingly limited territory. (Reads extract from Charlevoix, in French.) I find also in l'Escarbot, a description which shows that at that time the whole territory known as New France extended but a few miles on each side of the St. Lawrence; and Charlevoix regrets it, and says at that time the giving up of this territory did not amount to much, as New France was circumscribed by very narrow limits on either side of the St. Lawrence.† My learned friends say that the right of the French to places in Hudson's Bay was acknowledged by the Treaty of Ryswick. The Commissioners will see, on reference to this Treaty of Ryswick, that a special provision was made, quite distinct from the provision in the Seventh Article of the Treaty. By Article Eight it was specially provided that Commissioners should be appointed with full powers to settle the limits of the territories of the conflicting nations around Hudson's Bay. The fact of these Commissioners never having met to settle the limits, renders, I respectfully submit, the provisions of the Treaty, so far as the territories around Hudson's Bay are concerned, a dead letter.‡

Having shown that Sir George E. Cartier and Mr. McDougall were mistaken in most important points, I think that the pretension of my learned friends that the Dominion should be bound by this letter of its Ministers is unfounded.

On referring to a map attached to the report made by Mr. Ramsay to the Dominion of Canada some time ago, I find a line which corresponds with the one the Chief Justice referred to at the time, where the Red Lake is shown immediately to the north-west of Lake Superior, at the height of land. I understand that the Commissioners have much less difficulty about the western boundary than the other.

Chief Justice Harrison—It is the northern boundary that we want now to ascertain.

Mr. Monk—My learned friend seemed to attach considerable importance to the Constitutional Act of 1791. The Commissioners were alluding a few minutes ago to the fact that in the Proclamation which followed the Constitutional Act (Ontario Documents, 27), the words "until it strikes the boundary line of Hudson's Bay" are to be found. Now, this Proclamation was simply declaring when the Constitutional Act would come in force; so that if the Commissioners would take notice of the Constitutional Act itself, which is in Ontario Documents, page 4, they will perceive a frequent recurrence of the words, "Government of the *Province of Quebec.*" It is to be found in the second line of the second paragraph, and is continually mentioned, thereby indicating that by that Constitutional Act there was no intention whatever to enlarge or vary in any manner the old limits of the Province of Quebec, as stated in the Quebec Act of 1774. I may be allowed to refer to the remarks of Chief Justice Sewell in De Reinhardt's Case, which do not apply to the western boundary, but show that no increase of the limits of the Province of Quebec could have taken place. I am citing from the minutes taken in shorthand under the sanction of the court, printed in a book which I obtained from the parliamentary library, in which the point specially set forth by Mr. Stuart, then representing the prisoner, is fully reported.

* [This very quotation shows that the Charter of the French King covered the country as far north as the "Arctic Circle."—G. E. L.]

† [Charlevoix thus referred to the settled districts only of New France; and as to L'Escarbot, see his description, p, 10, *ante*, wherein New France is stated to be limited on the west by "the Pacific Ocean," and on the north by the "Frozen Sea."—G. E. L]

‡ [But by this eighth article of the Treaty certain places in the Bay were confirmed to France, without regard to any action of the Commissioners. (See the Treaty, Book Arb. Docs., p. 15.)—G. E. L.]

The case came up specially on two or three occasions. It came up on a motion for arrest of judgment after the verdict had been rendered. On this question as to whether the Constitutional Act of 1791, owing to the use of this word "Canada," might directly or indirectly be accepted as showing what was the Province of Quebec, Chief Justice Sewell was concurred with by Mr. Justice Bowen and Mr. Justice Perault. I will read from his decision: Chief Justice Sewell—"The Court are most distinctly of opinion, on referring both to the Act of 1791 and that of 1774, that the argument on the offence must fail. What was the object of each Act? Amongst others, that of 1774 was to enlarge the Province of Quebec, which had been created in 1763. That of 1791 was to separate or divide the Province of Quebec into two Provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other by giving a Legislature to each respectively, but still retaining between or within the two Provinces, the same extent of country, the same space as the one Province contained." What is the Act? What is its object, its avowed object? To repeal certain parts of the Act of 1774; and what is the part repealed? It is that part of it which gives authority to the Council of the Province of Quebec. And what is the reason assigned for so doing? Why, that His Majesty had signified it to be his royal will and pleasure to divide his Province of Quebec. To assert that he intended by this that the limits of the Province should be extended by the separation, appears to me repugnant to the plainest principles of common sense, and therefore I cannot assent to it. The short history of the Act of 1791 is briefly this: The King signifies to Parliament his royal intention of dividing his Province of Quebec, and he calls on the Legislature to provide for this alteration by granting an Act adapted to the change. The Legislature pass an Act providing for the due government of the two Provinces, and under the authority of this Act, and the Royal Proclamation, the Province of Quebec was accordingly divided, the Royal Proclamation being an exercise of sovereign authority. His Majesty in that Act, by and with the consent of his Privy Council, declared what shall be the line of separation between Upper and Lower Canada, and how much of the former Province of Quebec shall belong to the one, and how much to the other. The object of the Act and the object of the Royal Proclamation are so clearly expressed that we cannot for a moment doubt upon the subject. What says the Act? "His Majesty having been pleased to signify his royal will and pleasure to separate and divide the Province of Quebec." What says the Proclamation? Why, the very same words. To divide the Province of Quebec, not to add to it, any more than to take away from it. Therefore Upper Canada, in the purview, could include only that part of the Province so divided as was not contained in Lower Canada; but it could not extend beyond those limits which constituted the Province of Quebec, otherwise it would certainly have been an Act to enlarge rather than an Act to divide.*

Sir Francis Hincks—Unfortunately that does not help us one bit, because of the indefinite character of the boundary of Hudson's Bay. We want to know the southern boundary of Hudson's Bay. The Act of 1791 does define it to a certain extent, because it refers to a line drawn due north to a certain point, to the boundary of Hudson's Bay; and then afterwards the commissions come in to assist us, and they say distinctly, "to the shore of Hudson's Bay." If the Act had said, "the boundary line of the territory of Hudson's Bay," it would have been clear; but it says, "the boundary line of Hudson's Bay." This is the difficulty with which we have to deal.

Chief Justice Harrison—From that it may be fairly argued that it was understood at that time that the south shore of Hudson's Bay was the southern limit of the Hudson's Bay Company.

Sir Francis Hincks—The Attorney-General has brought forward his argument very strongly on that point, and I do not think you have answered him by the Act of 1774, because that simply gave an indefinite boundary.

Mr. Monk—If our contention be correct, that it was not intended by the Constitutional Act to extend in any manner the limits of the Province of Quebec, we have to

* [See as to this, the argument of the Attorney-General before the Arbitrators, *ante*; and the opinion of the Upper Canada judges, notes ‡, p. 211, *ante*, and *, p. 272, *ante*.—G. E. L.]

examine the Quebec Act of 1774, however indefinite it may be, to see what were considered the southern boundaries of Hudson's Bay at that time. The Quebec Act of 1774, in defining the northern boundary of the extended Province of Quebec, says "northward"—not to Hudson's Bay, as the proclamation does, but—"to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay."

Chief Justice Harrison—That, of course, was uncertain at that time. There was no natural boundary referred to there. That has been the dispute all along, and it continued shifting from time to time.

Mr. MacMahon—And that is what is to be decided by the Commissioners now.

Mr. Monk—This would bring us back to the Proclamation of 1763, constituting the four Provinces in the British dominions, and specifying thus—"And we do further declare it to be our royal will and pleasure for the present, as aforesaid, to receive under our sovereignty, dominion and protection, for the use of the said Indians, all the lands and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company," not specifying them again, but clearly indicating by inference that the territory to the north of the old Province of Quebec up to the limit, to that northern boundary, had been granted to the Hudson's Bay Company, as it was occupied, or supposed to be occupied, by them. I would refer the Commissioners to the tenth article of the Treaty of Utrecht (page 16, Ontario Documents), as follows :—"The said Most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Streights of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said bay and streights, and which belong thereto, no tract of land or of sea being excepted which are at present possessed by the subjects of France." At that time there were some forts occupied by the French just at the other side of the northern boundary, the height of land. The Eleventh Article of the Treaty provides that "the Most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods by the hostile incursions and depredations of the French." On reference to this map of Devine's, the Commissioners will see that at that time there were French posts just at the other side of the height of land. For instance, there was one on the south-west corner of Lake Mistassinnie, another just at the other side of the height of land, just above Lake Temiscaming, another at the source of Moose River, and another south-east of Lake Joseph, a little above Lake Superior. The stipulation regarding the damages which were to be paid to the Hudson's Bay Company, and the restitution of the forts, constitute, as far as we can judge, an acknowledgment of their rights to that portion of the country.* The real question, as I understand it, is to ascertain what was understood by the Hudson's Bay Company as their southern boundary by the authority that fixed that of Upper Canada. Subsequent to this Treaty of Utrecht in 1711, commissioners were appointed; and, although the first commissioners appointed did not come to any conclusion, owing to the fact of their powers, it would seem, not being sufficiently extensive, other commissioners were appointed, and the Hudson's Bay Company were ordered by the Lords Commissioners of Trade and Plantations to send in their claim as they understood it. The Hudson's Bay Company did send in their claim, and in 1719 instructions were given to Commissioner Bladen regarding the limits of the territory in question, based on the claim of the Hudson's Bay Company; and Commissioner Bladen received certain instructions as to the limits which he was to insist upon. His instructions are at page 362, Ontario Documents. This is important as being a recognition on the part of England of the claim of the Hudson's Bay Company, such as had been sent in at the time, since they insist upon Commissary

* [But the inland posts here referred to as being north of the Height of Land were never claimed by the Company; and they remained, with several others in the same region, in possession of France till the cession of Canada. And yet the Company professed themselves satisfied with what had been delivered up to them: "The surrender of the Bay and Streights aforesaid has been made according to the tenour of the Treaty, at least in such manner that the Company acquiesce therein, and have nothing to object or desire further on that head." (H. B. Co.'s Memorial of 1719, Book Arb. Docs., p. 359.)—G.E.L.]

Bladen maintaining his position as far as these limits are concerned. The limits, as contained in these instructions, are a line "drawn from the south-western point of the Island of Grimington, or Cape Perdrix (so as to include the same within the limits of the Bay), to the Great Lake Miscosinke, *alias* Mistoveny, dividing the said lake into parts (as in the map to be delivered to you); and that where the said line shall cut the 49th degree of northern latitude, another line shall begin and be extended westward from the said lake, upon the 49th degree of northern latitude, over which said line, so to be described as above mentioned, the French, and all persons by them employed, shall be prohibited to pass to the northward of the said 49th degree of latitude." There can be no doubt whatever that at that time the 49th parallel seemed settled upon as corresponding about with the height of land. Further on in the instructions of the commissary are these words: "But you are to take especial care in wording such articles as shall be agreed on with the commissary of His Most Christian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only," clearly recognizing in these instructions to their commissary that the charter of the Hudson's Bay Company, such as it had been granted to them, according to their interpretation and recognition of the charter, extended down to the 49th degree of latitude.

Chief-Justice Harrison—For the purposes of trade only.

Mr. Monk—I would respectfully submit that their charter for the purposes of trade did not extend farther than their territorial right went. In 1719 a memoir on the subject of the limits of the Hudson's Bay was sent to the English commissioners through Lord Stair to the Marquis D'Estrées, one of the French commissaries. It states:—"The commissaries named by His Britannic Majesty demand that the said limits may be defined in the following manner, viz.: That the limits shall commence from the north cape of Davis Bay, in latitude 56 degrees 30 minutes, which shall serve as limits between the English and the French on the coast of Labrador." It then describes the coast of Labrador and the 49th parallel as being the limits on which the English commissaries would insist; and proceeds to state that these limits were to be insisted on solely as regards the trade, and that His Britannic Majesty did not thereby accede to the right of the French to any lands in America in the said boundaries. I submit that this was an act on the part of His Majesty's Government clearly showing that in 1719 the interpretation of the Hudson's Bay Charter, and the limits as understood then, were the 49th parallel, or what was corresponding to it, the height of land, as understood at that time. I will not detain the Commissioners any longer on this portion of the case.

If there is any difficulty as to whether this northward line should be drawn due north from the confluence of the Ohio and the Mississippi, or should follow the course of the Mississippi, I would refer the Commissioners most particularly to the judgment, a very exhaustive one, which was rendered by Chief Justice Sewell and his colleagues upon the motion on arrest of judgment in the De Reinhardt case which I have above referred to. It is not reported in full in the Ontario Documents, and is very imperfect as an extract. The point was a most important one, the life of a fellow-being depended on it, and the gentlemen on the bench to whom was entrusted the decision were men of the highest reputation and standing in the legal world.

Chief Justice Harrison—Notwithstanding the adjudication, the point supposed to be adjudicated upon seems to have been considered so doubtful that the sentence was never acted upon.

Mr. Monk—But the reason I lay some stress upon this is that my learned friend seemed to think that this question at the trial had simply come up incidentally. The fact is that it was argued at great length on the motion for arrest of judgment, and a decision come to after mature consideration of all the documents and treaties, and after as much historical research as was possible. Chief Justice Sewell says: "We have been compelled to give a decision upon the question, not from any wish on our part, but because it has been brought before us and we had no way of evading it." "It is impossible for us to do otherwise; it is a fixed and certain boundary (speaking of the due north line from the confluence of the Ohio and Mississippi), and according to the statute we have to the best of our knowledge decided it. In the decision we have made we are supported by the authority of Lord Hardwicke in the disputes between Penn and Balti-

more"—where a similar difficulty arose. I have the case at length, but there is no use in detaining the Commissioners any longer upon it, if I may be allowed to leave this book with them. The discussion about this northward line is very amply shown in these notes which I hold; much more so than in the Ontario Documents. I do not know from what report that extract was taken. The book I have contains every point brought up and adjudicated upon, and every argument used in favour of the pretension which my friends are urging, that the Mississippi should be the boundary line.

THE ATTORNEY-GENERAL OF ONTARIO IN REPLY.

The Attorney-General in reply said:—Most of the arguments of my learned friends which are not covered by the observations that I addressed to the Arbitrators in my opening, have been already considered and answered in Mr. Mills' report, and the documents of which the Arbitrators have been put in possession; and, to avoid prolonging the present discussion, I shall confine my reply to the estoppel which my learned friend Mr. MacMahon finds in the settlement made by the Dominion with the Hudson's Bay Company, and in the Imperial Act under which the settlement was effected. My learned friend has pointed out that an individual who with full knowledge acquiesces by his silence in what is done by others to his prejudice, cannot afterwards hold the thing so done to have been as against him illegal or void. I do not desire to hold the transaction between the Company and the Dominion to have been illegal or void. It was the pressure from the people of Upper Canada that brought it about; but when all the Company's claims became vested in the Dominion, both those claims that there is a question about and those that there is no question about were expected to enure, and I submit did clearly enure, for the benefit of whatever portions of the Dominion were really entitled thereto as against the Company. The Dominion was acting in the settlement as trustee for all the Provinces which constituted the Dominion. The new territory not within any of the Provinces is in the common interest to be divided into provinces as it becomes settled. Ontario did not suppose that any statute obtained from the Imperial Parliament, or anything done by the representatives of the Dominion, was to estop her from claiming what belonged to her as a Province. But there is no proof that Ontario as a Province even knew anything about the matters which are said to estop her, before these matters were finally concluded. In fact, they all took place without any reference to the Local Government. The Dominion Government was understood to be acting for all in good faith, and without prejudice to the rights of the Provinces among themselves; and the Province of Ontario had a right to assume that the Dominion, after settling with the Company, would take the same view of the boundary question which the Dominion had always previously taken, namely, that Canada, and therefore Ontario, extends to the Rocky Mountains on the west and far north of the height of land, no intimation to the contrary having been given to the Provincial Government until long after the acquisition of the Company's claims. The Company had some territory in regard to which there was no dispute; it really did belong to the Hudson's Bay Company; it was thought important that Canada should acquire this territory; and it was desired also to get a clear and undisputed title to both that which the Hudson's Bay Company certainly had, and the further territory in regard to which there was the dispute. The settlement with the Company was not on the assumption that the whole belonged to the Company; the £300,000 paid to the Company would have been a mere bagatelle as purchase money for all that the Company pretended to claim; it would have required several millions to buy all if their title had been clear; but there was a controversy about the title, and it was thought worth while to give that amount of money and certain other advantages to the Company, for the purpose of getting all doubt removed without further delay. The arrangement was a compromise, and understood to be so.

Chief Justice Harrison—You were acquiring, in fact, a quit claim.

The Attorney-General—That was all. There is another point with reference to my learned friend's estoppel. He says that we stood by and concealed our rights from the Dominion Ministers. But, on the contrary, they knew our rights better, perhaps, than

the new Provincial Ministers did. It was Dominion Ministers who had been stating our case against the Company; everything they had stated against the Company was in favour of Upper Canada; whatever they claimed to the north and west as belonging to Canada was in fact a claim for Ontario. Some of these Ministers had indeed been the very agents through whom the facts in our favour had been brought to light and pressed, officially and otherwise, upon public attention. In consequence and by means of this contention they got the surrender from the Company for a comparatively small sum, and they prevented the Province from negotiating on its own account with the Company. If there is any estoppel in the case, it is the Dominion that is estopped from resisting our claim, instead of the Province being estopped from making the claim.

AWARD OF THE ARBITRATORS.*

To all to whom these Presents shall come:

The undersigned having been appointed by the Governments of Canada and Ontario as arbitrators to determine the northerly and westerly boundaries of the Province of Ontario, do hereby determine and decide that the following are and shall be such boundaries; that is to say:—

Commencing at a point on the southern shore of Hudson's Bay, commonly called James' Bay, where a line produced due north from the head of Lake Temiscaming would strike the said south shore; thence along the said south shore westerly to the mouth of the Albany River; thence up the middle of the said Albany River, and of the lakes thereon, to the source of the said river at the head of Lake St. Joseph; thence by the line to the easterly end of Lac Seul, being the head waters of the English River; thence westerly through the middle of Lac Seul and the said English River to a point where the same will be intersected by a true meridional line drawn northerly from the international monument placed to mark the most north-westerly angle of the Lake of the Woods by the recent Boundary Commission; and thence due south, following the said meridional line to the said international monument; thence southerly and easterly following upon the international boundary line, between the British possessions and the United States of America, into Lake Superior.

But if a true meridional line drawn northerly from the said international boundary at the said most north-westerly angle of the Lake of the Woods, shall be found to pass to the west of where the English River empties into the Winnipeg River, then, and in such case, the northerly boundary of Ontario shall continue down the middle of the said English River to where the same empties into the Winnipeg River, and shall continue thence on a line drawn due west from the confluence of the said English River with the said Winnipeg River, until the same will intersect the meridian above described; and thence due south, following the said meridional line to the said international monument; thence southerly and easterly, following upon the international boundary line, between the British possessions and the United States of America, into Lake Superior.

Given under our hands, at Ottawa, in the Province of Ontario, this third day of August, 1878.

Robt. A. Harrison.
Edwd. Thornton.
F. Hincks.

Signed and published in the presence of
E. C. Monk.
Thomas Hodgins.

* Sess. Papers, Ont., 1882, No. 23. Report of Proceedings before the Arbitrators, p. 67; Report Ho. Coms. Committee, 1880, p. 480.

* [For the orders of reference by the respective Governments, 12th November, 1874, see *ante*, pp. 246, 247 and 249. For the orders dated 31st July, 1878, see *ante*, p. 266. The latter Orders were for giving effect to arrangements, long before made, for substituting Chief Justice Harrison for Chief Justice Richards, who had resigned; and Sir Francis Hincks for Hon. L. A. Wilmot, who had died; and for appointing Sir Edward Thornton as third arbitrator. The three arbitrators had been communicated with accordingly, long before they met in Ottawa to hear counsel, and the papers and documents bearing on the question had from time to time been sent to them, for perusal and consideration, as they were got ready. When the arbitrators assembled in Ottawa by appointment to hear counsel, the formal Orders of 31st July, 1878, were made.—G.E.L.]

THE PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.*

TORONTO, 31st December, 1878.

SIR,—I am directed by His Honour the Lieutenant-Governor to intimate that a measure will be introduced during the approaching session of the Legislature to give effect, by way of declaratory enactment and otherwise, to the award made by the arbitrators appointed by the Governments of Canada and Ontario to determine the northerly and westerly boundaries of the Province of Ontario. The Act, I presume, may be in substance the same as R. S. O., chapter 4, with the variations necessary in consequence of the award having now been made. No proclamation was issued, as had been contemplated, when the Act was passed. See section 3.

I am further directed respectfully to remind the Government of Canada that the territory which was in dispute before the award was made, extends on the easterly side of Ontario from, say, the Rocky Mountains to a line drawn due north from the confluence of the Ohio and Mississippi, and extends on the northerly side from, say, the height of land to the most northerly limit of Canada; that the award assigns part of this territory to the Dominion, and part to Ontario, and that the administration of justice will continue to be surrounded with difficulties and uncertainties, especially in the matter of jurisdiction, until the award is confirmed by express legislation at Ottawa and here; and that the subject assumes unusual importance in view of the construction of public works within the territory and the consequent influx of an unsettled and migratory population.

His Honour the Lieutenant-Governor will be glad to learn that such legislation as may be necessary to give effect to the award will be had at Ottawa at the next session of the Parliament of Canada; as the legislation should, it is respectfully submitted, be as nearly as possible simultaneous and identical.

His Honour will be glad to receive and consider any suggestions in connection with this object, and also to receive as soon as possible the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion.

I have the honour to be, Sir,
Your obedient servant,

ARTHUR S. HARDY,
Secretary.

Hon. J. C. Aikins, Secretary of State, etc., etc.,
Ottawa.

THE UNDER-SECRETARY OF STATE TO THE PROVINCIAL SECRETARY.*

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 8th January, 1879.

SIR,—I have the honour to acknowledge the receipt of your letter of the 31st December last, addressed to the Honourable the Secretary of State, respecting legislative enactment to give effect to Award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario, and am directed to state that the same will not fail to receive all due consideration.

I have the honour to be, Sir,
Your most obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

The Honourable A. S. Hardy,
Provincial Secretary, Toronto.

* Sess. Papers, Ont., 1879, No. 80.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE OPENING OF THE LEGISLATURE, 9TH JANUARY, 1879.*

It is also my pleasing duty to call your attention to the settlement by arbitration of the northern and western boundaries of Ontario, since you last assembled. The decision of the Arbitrators declares the boundaries of the Province to extend to the waters of Hudson's Bay on the north, and to the north-west angle of the Lake of the Woods on the west, these limits embracing an area of many thousand square miles beyond the limits to which the claim of the Dominion since 1871 would have confined us. You will be invited to approve of a measure having for its object the preservation of order, the administration of justice, and the encouragement of settlement and enterprise in this territory. I have reason to believe that the outlay necessary to secure these objects will be more than compensated by the revenue to be derived from the country.

AN ACT RESPECTING THE NORTHERLY AND WESTERLY BOUNDARIES OF ONTARIO.†

Whereas the northerly and westerly boundaries of the Province of Ontario were not determined until lately;

And whereas pending the determination thereof certain provisional lines, which for certain purposes were to be regarded as such boundary lines, were agreed to by the Governments of the Dominion and the Province;

And whereas it was agreed by the Governments of the Dominion of Canada and the Province of Ontario that the true boundaries should be determined by reference to arbitration;

And whereas one of the arbitrators named in the Revised Statutes of Ontario, chapter four, died, and the other resigned without having made any award;

And whereas the Governor-General of Canada in Council afterwards named as arbitrator the Honourable Sir Francis Hincks, of the City of Montreal, Knight, and the Lieutenant-Governor in Council of this Province named as arbitrator the Honourable Robert Alexander Harrison, Chief Justice of Ontario;

And whereas the two Governments further agreed that the Right Honourable Sir Edward Thornton, Knight, should be the third arbitrator, and that the determination of the award of the said arbitrators or a majority of them in the matter of the said boundaries should be taken as final and conclusive;

And whereas on the third day of August, in the year of our Lord one thousand eight hundred and seventy-eight, the said arbitrators made their award in writing, in the words following:—[Here is given the text of the Award, which see in order of date 3rd August, 1878, *ante* p. 370.]

And whereas the effect of the said award is to give to this Province less territory than had been claimed on behalf of the Province, and more territory than the Government of Canada had contended to be within the limits of the Province, or than was contained within the provisional boundary lines aforesaid;

And whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it is enacted that the Parliament of Canada may, from time to time, with the consent of the Legislature of any Province in the Dominion, increase, diminish, or otherwise alter the limits of such Province upon such terms and conditions as may be agreed to by the said Legislature, and may with the like consent, make provision respecting the effect and operation of any such increase, or diminution, or alteration of territory in relation to any Province affected thereby;

And whereas it is proper that the boundaries determined by the said award be adopted and confirmed;

---

* Journals Leg. Ass., 1879, Vol. 12, p. 2.

† Ontario Statutes, 42 Vic., cap. 2. Assented to 11th March, 1879.

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Legislature of the Province of Ontario consents that the Parliament of Canada may declare that the boundaries which by the award of the arbitrators aforesaid were decided to be the northerly and westerly boundaries, respectively, of this Province, shall be and are the northerly and westerly boundaries thereof, whether the same increase, diminish, or otherwise alter the true northerly and westerly limits of the Province.

THE ASSISTANT PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.*

TORONTO, 2nd May, 1879.

SIR,—As in the report of the proceedings in the House of Commons of 1st instant, appearing in the newspapers, it is stated that the papers relating to the North-West boundary question have been mislaid, I am instructed, in order that no time may be lost in introducing the legislation necessary to set at rest any doubts as to the boundaries of Ontario, to forward to you the following documents:—

1st. A copy of the printed collection of Statutes, Documents and Papers bearing on the question.

2nd. Printed statement of the Case of the Government of Canada.

3rd. Printed statement of the Case of the Province of Ontario.

4th. A manuscript copy of the Order in Council of the Lieutenant-Governor of Ontario with reference to the appointment of arbitrators.

5th. A manuscript copy of the Award.

6th. Printed copy of correspondence between the Secretary of State of Canada and the Secretary of this Province respecting legislation with reference to the Award.

I am further desired to say, that in order to facilitate the consideration of this matter, copies of the printed documents above mentioned have been forwarded to each member of the Dominion Government.

I have the honour to be, Sir,

Your obedient servant,

I. R. ECKART,

Assistant Secretary.

The Honourable the Secretary of State (Canada),
Ottawa.

THE ASSISTANT PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.†

TORONTO, 23rd September, 1879.

SIR,—I am directed by His Honour the Lieutenant-Governor to call the attention of the Government of Canada to my despatch dated 31st December last, respecting the legislation needed to put beyond dispute, in civil and criminal cases, any question as to the western and northern limits of Ontario.

The measure therein referred to as intended to be submitted to the Legislature of Ontario was, as you are aware, passed at its last session; but no like Act was passed by the Parliament of Canada at its recent session.

I am to remind you that a report on the subject, by a Committee of the Honourable the Privy Council, was approved by His Excellency the Governor-General in Council on the 12th November, 1874, and that in this report it was set forth that, in a memoran-

---

*Sess. Papers, Ont., 1880, No. 46, p. 2. †*Ibid.*, p. 3.

dum dated on that day, the Premier of the Dominion recommended concurrence in a proposition made by the Government of Ontario, to determine, by means of a reference, the northern and western boundaries of that Province relatively to the rest of the Dominion; that the Ontario Government having named the Honourable William Buell Richards, Chief Justice of Ontario, as one of the referees, the Premier submitted the name of the Honourable Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advised that authority should be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively, and by the report of the Committee of the Privy Council it was recommended that the Dominion should agree to concurrent action with the Province of Ontario, in obtaining such legislation as might be necessary for giving binding effect to the conclusion which should be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance with the award.

A further report of a Committee of the Honourable the Privy Council was approved by His Excellency the Governor-General in Council on the 31st July, 1878, whereby it was stated that the Committee of Council had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the then Chief Justice, the Honourable R. A. Harrison, and to the Honourable Sir Francis Hincks, who had been named on behalf of the Dominion, and that subsequently to the action taken under the Order in Council of 12th November, 1874, it had been mutually agreed between the Governments of the Dominion and Ontario that the Right Honourable Sir Edward Thornton should be selected as third referee, and the Committee recommended that such selection should be confirmed by Minute of Council, and that the determination of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively.

Corresponding Orders in Council were made by this Province.

I am directed to respectfully suggest that an award having, on the 3rd August, 1878, been duly made in pursuance of the reference, it it is just that there should be no further delay in formally recognizing the award as having definitely settled the matters submitted to the arbitrators.

The Government of Ontario, on its part, acquiesced in the award, not because it was believed to have accorded to this Province all that was claimed on its behalf, or all that the Province might within its strict legal rights have had awarded to it, but because the tribunal appointed jointly by the two Governments was one to whose competency and character no one could take exception, and because according to the judgment of the people of Ontario neither party to the arbitration could consistently with good faith refuse to abide by the decision.

The Government of Ontario does not doubt that the Government and Parliament of Canada will ultimately take the same view, and I have respectfully to represent that the delay in announcing the acquiescence of the Dominion authorities, and in giving full effect otherwise to the award, has been embarrassing and injurious.

The present Government of Canada has already been made aware that before the arbitrators met an exhaustive collection had been made by the Governments of Canada and Ontario, severally, of all the facts, documents and evidence bearing upon the controversy; that everything material had been printed, and in a form which facilitated to the greatest practical degree the full and prompt examination of the question at issue; that cases had been prepared on both sides, containing a summary of the respective claims and the reasons therefor; that these cases also had been printed; and that the whole matter had been argued before the arbitrators by counsel.

With respect to the arbitrators it is manifest that no three persons could have been selected whose judgment would be entitled, in such a case, to more unqualified respect than that of the three arbitrators appointed. Sir Francis Hincks, as a Canadian publicist and statesman, is acknowledged to have few equals in shrewdness, industry or

ripe experience; the late Chief Justice Harrison was a lawyer of the first rank, and a judge whose method of reasoning was always distinguished for its practical and common sense character; and Sir Edward Thornton, Her Majesty's Minister at Washington, brought to the consideration of the case, not only the aid of the very high abilities, but the absolutely independent judgment of one who could have no partialities or inclinations in favour of either side.

If the merits of the award have been considered by the Government of Canada they will have observed certain preliminary things in connection with the question which were and are beyond controversy. Amongst these are the facts that Ontario is entitled to the same limits as Upper Canada had, whatever these were; that these limits embrace so much of the British territory, west of the division line between Ontario and Quebec, as belonged to France before the cession of 1763, and (what is the same thing) so much as belonged to the Province of Canada before Confederation, or (in other words) so much as belonged to the Dominion before its purchase of the rights of the Hudson's Bay Company, and that the single question which the arbitrators had to consider was, what territory Canada had on the Ontario side of the division line before the recent purchase from the Hudson's Bay Company had been made.

It must further have been noticed that the territory awarded to Ontario is considerably less than had been officially claimed and insisted upon by the Province of Canada before Confederation, and by the Dominion afterwards, and considerably less, on the west, than, according to the legal opinion of Chief Justice Draper in 1857, Canada was clearly entitled to.

Further, the territory so awarded to Ontario is less than was comprised in Upper Canada, according to the true intent and meaning of the Quebec Act (1774), as shown by its recitals, and by its known objects, and its history, including the proceedings thereon in the House of Commons, as reported in "Cavendish's Debates," and as set forth in the letter of the Right Honourable Edmund Burke, dated 2nd August, 1774, to his constituents, the Province of New York, whose agent he was at the time. All these documents are to be found amongst the printed documents already mentioned.

The terms of the Royal Commissions assigning or defining the boundaries of Canada and Upper Canada respectively, appear in the same book; and a reference to them will have shown to the Government of Canada that the territory awarded to Ontario is less than was given to the Province by the express terms of the Royal Commission (27th December, 1774,) which, immediately after the passing of the Quebec Act, was issued to Sir Guy Carleton, as Captain-General and Governor-in-Chief of the Province; and also by the express terms of the Commission to his successor, Sir Frederick Haldimand; that the Commission to Sir Guy Carleton, after the Treaty of Paris of 1783, expressly gives as one of the boundaries of the Province a line to the Lake of the Woods, thence through said lake to the most north-western point thereof (as the Arbitrators have done), and from thence in a due west course to the River Mississippi. The Arbitrators have not given to the Province any territory west of the Lake of the Woods.

The Government of Canada must also have observed that a paper was presented to Parliament previous to the passing of the Constitutional Act of 1791, describing the line which it was proposed to draw in order to divide the then Province of Quebec into two Provinces; that this line is described as drawn from the head of Lake Temiscaming due north until it should strike the boundary line of Hudson's Bay, including, as the paper stated, all the territory to the westward and southward of the said line to the extent of the country commonly known by the name of Canada; that on the 24th August, 1791, an Order in Council referred to this paper, and divided the Province accordingly; that the subsequent Proclamation of General Clarke, in the same year, contained a description in the same words; that the Royal Commissions to Lord Dorchester and subsequent Governors-General, to and including the Commission to Lord Gosford in 1835, described the division line between Upper and Lower Canada in the same way, as extending to the boundary line of Hudson's Bay; and that the Commissions, from that to the Earl of Durham in 1838, to the Commission to Lord Elgin in 1846, as well as various other Royal Commissions, described the line of division as striking the shore of Hudson's Bay.

It is also undenied and undeniable that the Province of Upper Canada, for a period long antecedent to its union with Lower Canada, acted whenever there was occasion on the assumption that the boundaries of the Province were those so assigned by the Royal Commissions, and issued writs into the territory west of the line 89° 9½′ (which was the line insisted on by the Dominion after the purchase from the Hudson's Bay Company).

It is another significant fact of the same kind that the Province of Canada, as far back as 1850, procured from the Indians the surrender of their rights in the same territory west of that line, and from time to time thereafter made grants, in the Queen's name, of land west of the same line.

In truth, so far as the western boundary is concerned, it was proved to demonstration that the north-west angle of the Lake of the Woods was the most easterly limit that could be assigned to the Province under any interpretation of the evidence.

There is an old decision of a Court in Lower Canada in what is called the De Reinhardt case, in favour of a more easterly line, viz., 89° 9½′ (the meridian of the confluence of the Ohio and Mississippi Rivers), but on an examination of the case, of which a full report is in print and accessible, it will be found that the decision was come to without the Court being aware of the terms of the Royal Commissions to the Governors hereinbefore mentioned, and without attention having been called to the historical facts which are referred to in the recitals of the Quebec Act, and which give significance to those recitals as bearing on the question of boundary; nor was the Court in possession of the evidence of intention which is afforded by the debate on the Bill and by other means now known and relied upon as demonstrating the other construction. De Reinhardt, though clearly guilty, was not executed, and the only known or supposed reason for pardoning him is that the British Government were advised that the conclusion of the Court on the point in question was not maintainable. This is stated in an official paper on the part of the late Province of Canada.

Only one of the Royal Commissions hereinbefore mentioned, so far as is known, was in print before the recent investigations, and when copies of these Commissions were procured and examined for the purposes of the arbitration it became apparent that these Commissions alone set at rest all possible question that the westerly boundary of the Province included the Lake of the Woods; and that the northerly boundary extended to the shore of Hudson's Bay on the east, and to or beyond the most north-west angle of the Lake of the Woods on the west. How far north of these points our northerly boundary was to be found was a fair subject of controversy, but the territory north of these two points is of comparatively little value. It is to be observed that the line of the English and Albany Rivers, which was fixed upon by the Arbitrators as the northerly boundary, is not far north of a straight line connecting the two points mentioned, and has the advantage of presenting an almost unbroken waterline; that it is thus a natural and convenient boundary; and that it gives to Ontario a less aggregate quantity of territory in the north than is assigned to Canada in some of the maps of the Hudson's Bay Company itself; and gives to the Province a less northerly boundary than the Company in 1701, thirty years after the Charter, was content with and unsuccessfully endeavoured to restrict Canada to.

But if it were far less clear than it is that the award does not give Ontario more territory than the Province was entitled to, and if the reasons which justify the conclusions of the Arbitrators were far less clear and strong than they are, it is respectfully submitted that the award demands the active acquiescence and recognition of the parties to the reference. The question of boundaries was in controversy, it was referred by mutual consent to the distinguished gentlemen named, they have made their award, and the fact is conclusive in regard to all questions on the subject.

I am further to remind the Government of Canada that the settlement of the controversy, as well as the explorations for railway and other purposes, have drawn public attention to the territory north and west of Lake Superior, that settlement therein is proceeding, that various enterprises are establishing themselves, that speculation is likely to be directed to this region, and that various causes are at work favourable to an influx of population, both of a settled and floating character.

In view of these considerations the Government of Ontario trusts that the Govern-

ment of Canada will recognize the propriety of announcing without further delay their intention to submit to Parliament, next session, a Bill declaring the boundary established by the Arbitrators to be the true northerly and westerly boundaries of Ontario, and to use the influence of the Government to have the measure accepted by both Houses, and assented to by His Excellency the Governor-General.

I am to renew the request contained in a former despatch that the Government of Canada would be pleased at once to forward to this Government the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as has been surveyed under the authority of the Dominion.

I have the honour to be, Sir,

Your obedient servant,

I. R. Eckart,
Assistant Secretary.

The Honouarble the Secretary of State (Canada),
Ottawa.

The Under-Secretary of State to the Provincial Secretary.*

Department of the Secretary of State,

Ottawa, 25th September, 1879.

Sir,—I have the honour to acknowledge the receipt of your communication of the 23rd inst., with reference to the question as to the northern and western limits of the Province of Ontario; and to inform you that the subject will be submitted to His Excellency the Governor-General.

I have the honour to be, Sir,

Your most obedient servant,

Edouard J. Langevin,
Under-Secretary of State.

The Honourable the Provincial Secretary of Ontario,
Toronto.

The Provincial Secretary to the Secretary of State.†

Provincial Secretary's Office, Ontario,

Toronto, 19th December, 1879.

Sir,—I have the honour to call your attention to my despatch bearing date the 31st day of December, 1878, and to intimate that the Government of Ontario have not yet been favoured with the reply of your Government to the suggestions made and information sought by my communication. I beg further to intimate that the Arbitrators having made their award, the Government of the Province understand that the provisional arrangement theretofore in force between the Province and the Dominion, having reference to the boundary and the north-west portion of the Province is at an end, the award having "definitely settled" the boundaries between the Province and the Dominion.

I have the honour to be, Sir,

Your obedient servant,

Arthur S. Hardy,
Provincial Secretary.

Hon. J. C. Aikins,
Secretary of State, Ottawa.

---

* Sess. Papers, Ont., 1880, No. 46, p. 6. † *Ibid.*, p. 2.

Extract from the Speech of His Honour the Lieutenant-Governor of Ontario, on the Opening of the Legislature, 8th January, 1880.*

Some correspondence has taken place between my Government and the Government of Canada respecting the award of the boundary Arbitrators. I trust that at the approaching session of the Dominion Parliament the award will receive from that body legislative recognition.

Report of the Minister of Justice.†

Department of Justice,

Ottawa, 20th January, 1880.

I have the honour to report:—That an Act was passed by the Legislature of the Province of Ontario, at its last session, intituled (chapter 19) "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."

This Act is apparently based upon the assumption that the conclusion come to by the Right Honourable Sir Edward Thornton, the Honourable Sir Francis Hincks, and the late Chief Justice Harrison, respecting the northerly and westerly boundaries of Ontario settled such boundaries.

I would call attention, however, to the fact that, as the Parliament of Canada have not yet legislated upon the subject, the question of the boundaries still remains, as a matter of law, unsettled. If the Parliament of Canada thinks proper to pass the necessary Act declaring the boundaries to be those decided upon by the gentlemen referred to, the Act under consideration would not in this point of view be objectionable.

I append a memorandum (marked "A") prepared by the Deputy of the Minister of the Interior respecting the provisional boundary agreed upon by the Governments of Canada and Ontario in the year 1874, together with a plan showing the territory included in the description in sections 1, 2, 3 and 8 of the Act now under consideration.

I submit for the consideration of Council the question whether, pending action by the Parliament of Canada with respect to the boundaries of Ontario, this Act should be left to its operation. It was received by this Government on the 26th day of March, 1879, so that the year within which the power of disallowance must be exercised will expire on the 25th of March, 1880. Assuming that it is concluded not to disallow the Act in connection with the boundary question, there are questions arising upon it which require serious consideration.

The 96th section of the British North America Act, 1867, provides that the Governor-General shall appoint the judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick; and by the 100th section, the salaries, allowances, and pensions of the judges of the Superior District and County Courts are to be fixed and provided by the Parliament of Canada.

By the 92nd section the Provincial Legislatures are empowered to make laws for the constitution, maintenance and organization of Provincial Courts, both official and criminal jurisdiction, and including procedure in civil matters in those courts.

Several of the Provinces of Canada have, since Confederation, provided for the appointment of officers called Magistrates, Stipendiary Magistrates, Commissioners, etc., and have given to those officers certain judicial functions. Till lately their powers have been confined to matters in which small amounts only have been in dispute, ranging from $100 and less.

In 1877 the Legislature of British Columbia passed a Bill respecting the Gold Commissioner's Court in that Province. This Bill gave to the Gold Commissioner, who was a local officer appointed by the Lieutenant-Governor, very extended jurisdiction in civil

---

* Journals, Legislative Assembly, 1880, Vol. 13, p. 5.

† Sess. Papers, Ont., 1881, No. 30, p. 3.

matters. It was reserved for the signification of the pleasure of His Excellency the Governor-General thereon. It was not assented to. I append an extract (marked "B") from the approved report to Council from this Department upon the Bill.

In 1877 an Act was passed by the Province of Ontario intituled "An Act respecting the Territorial and Temporary Judicial Districts of the Province and the Provisional County of Haliburton."

This Act gave to stipendiary magistrates referred to therein, and to the Division Court of the District of Algoma, certain extended jurisdiction.

The Act was left to its operation, but not without the attention of Council being called to its provisions. I append an extract (marked "C") from the approved report of the Department to Council respecting the same.

The Act now under consideration goes a step further, and practically provides for the whole administration of civil justice, for some time to come, within the territory referred to in the Act, by a court, the judge of which is appointed by the Lieutenant-Governor, and the salary and allowances of whom are fixed by the Provincial Legislature.

The 6th section gives to this court, in the District of Algoma, the following jurisdiction:—

1. In all personal actions where the amount claimed does not exceed $400.

2. In all actions and suits relating to debt, covenant and contract, where the amount or balance claimed does not exceed $800.

Provided always, as to the additional jurisdiction so hereby conferred, that the contract was made within Algoma, or the cause of action arose therein, or the defendant resides therein.

3. For the recovery of the possession of real estate in the said District.

4. "In replevin, where the value of the goods, or other property or effects distrained, taken or detained, does not exceed the sum of $400, and the goods, property, or effects to be replevied are in the said District."

Previous to the Act its jurisdiction was confined to personal actions where the debt or damages claimed did not exceed $100 (see Revised Statutes of Ontario, chapter 90, section 16), except by consent of the parties, when the stipendiary magistrate could, on their written consent, try cases to the extent of $800.

Section 8 gives to the stipendiary magistrate holding courts in certain remote districts therein mentioned the following jurisdiction:—

1. In all personal actions where the amount claimed does not exceed $100 (except as in the next section excepted).

2. "In all cases and suits relating to debt, contract, and covenant, where the amount or balance claimed does not exceed $200, or if the amount is ascertained by the signature of the defendant to the sum of $400.

"Provided always that the contract or covenant was made within the said portion of the District of Thunder Bay or Nipissing in which the court is held, or the cause of action arose therein, or the defendant resides therein.

3. "In certain actions for the recovery of the possession of lands or other corporeal hereditaments situated in the said portion of the District aforesaid in which the court is held, and the yearly value of which lands or hereditaments, or the rent payable in respect whereof, does not exceed $100, that is to say:—

(*a*) "Where the term and interest of the tenant of any such corporeal hereditaments has expired or has been determined by the landlord or the tenant by a legal notice to quit.

(*b*) "Where the rent of any such corporeal hereditaments is sixty days in arrear, and the landlord has the right by law to re-enter for non-payment thereof.

"And in respect to such actions the said courts shall have and exercise the same powers as belong to and may be exercised by the Superior Court of Common Law, in and in respect to actions of ejectment.

4. "In replevin, where it is made to appear that the value of the goods or other property or effects distrained, taken, or detained, does not exceed the sum of $100, and the goods, property or effects to be replevied are in the said portion of the District in which the court is held."

Section 10 provides for the appointment of an officer for the District of Algoma, to

be called the Deputy Clerk for Thunder Bay, and power is given to him to issue writs for the commencement in the District of Thunder Bay, of actions in the District Court. Provision is made for a seal for the court with which all writs and processes are to be sealed. An appeal is given from the stipendiary magistrate's order or decision to the judge of Sault Ste. Marie.

The 14th section is as follows :—

14. "Where the amount claimed in any action in the said District Court, or where, in the case of ejectment or replevin, the subject matter of the action as appearing in the writ in ejectment, or in the affidavit filed to obtain the writ in replevin, is beyond the jurisdiction of the County Courts in other parts of Ontario, costs to a successful defendant shall be taxed upon the Superior Court scale.

2. "In like manner, where the plaintiff recovers in respect to a cause of action beyond the jurisdiction of the said County Courts, costs shall be taxed to him on the Superior Court scale, subject, however, to his obtaining the certificate or order of the judge, where, under the Common Law Procedure Act, such certificate or order is required in the Superior Courts.

3. "In respect to any action within the provisions of the first part of this section, the attorney of a successful plaintiff shall be entitled to charge his client County Court costs only, unless he was instructed in writing by such client to sue in respect to a matter beyond the jurisdiction of the said County Courts, in which case the said attorney shall be entitled to charge costs upon the Superior Court scale.

4. "Either party may, as of right, upon giving twenty days' notice to the opposite party, have the taxation of costs by the deputy clerk revised by the clerk at Sault Ste. Marie."

The 15th section provides for the appointment of a sheriff of the District of Thunder Bay, and for the execution by him of writs and of other processes issuing out of the District Court.

The 16th section empowers the stipendiary magistrates, upon the trial of any cause where the amount claimed is over $200, or where the matters in dispute relate to the title of real estate, to state a special case for the opinion of the Court of Appeal in Ontario.

The 18th and 19th sections are as follows :—

18. "Every judgment of the said Division Courts may be enforced by writs or other process framed in accordance with the requirements of the case and similar in form to writs or other process for like purposes issued out of the Superior Courts.

19. "Every stipendiary magistrate of the District of Thunder Bay, or Nipissing, may exercise the authority conferred upon County Court judges by the revised statute respecting over-holding tenants."

The Legislature unquestionably has authority to constitute a court possessing the jurisdiction of the courts referred to in this Act, but I submit to Council whether this Act, which seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges, and which goes far beyond any previous Act of a similar character, should be disallowed, notwithstanding that other Acts, equally objectionable on principle, but less objectionable in degree, have been left to their operation. In my opinion the Act should be disallowed, unless the same be repealed within the time for disallowance.

JAS. McDONALD,
Minister of Justice.

"A."

(Memorandum by J. S. Dennis, Esquire, as to Boundary.)

[Annexed to the foregoing Report of the Minister of Justice, dated 20th January, 1880.]

Department of the Interior,

Ottawa, 21st January, 1880.

The undersigned has the honour to submit for the information of the Honourable the Minister of Justice, that on the 8th July, 1874, an Order in Council was passed, agreeing upon a conventional boundary between the Province of Ontario and the Dominion in the following terms:

[Here follow sections 1, 2, 3 and 4, of the agreement of 26th June, 1874, respecting a provisional boundary line. See p. 244, *ante*.]

The undersigned has further the honour to submit for the information of the Minister of Justice, a map showing the territory included in the several descriptions in sections 1, 2, 3 and 8 of the Act of the Ontario Legislature, passed at the last session thereof, chapter 19.

Respectfully submitted,

J. S. Dennis,
Deputy of the Minister of the Interior.

"B."

(Extracts from a former Report on a Bill passed in British Columbia for establishing Mining Courts.)

Annexed to the foregoing Report of the Minister of Justice, dated 20th January, 1880.]

In addition to the above Acts of the Legislature of British Columbia, a Bill was passed intituled "An Act to amend the Gold Mining Amendment Act, 1872," which Bill was reserved by His Honour the Lieutenant-Governor for the signification of the pleasure of His Excellency the Governor-General thereon. The Act is as follows: "Every Mining Court in this Province shall in addition to its present jurisdiction, have jurisdiction in all personal actions arising within the limits of its present district, and the Gold Commissioner presiding in any such court shall have the like powers to enforce any judgment, decree, rule, or order of such courts as are conferred by section 12 of the Gold Mining Amendment Act, 1872. The provisions of this Act shall only have effect in the Electorial District of Kootenay, and in that part of the Province known as Cassiar."

The Attorney-General of the Province reported upon this Act to the Lieutenant-Governor as follows: "This Act gives jurisdiction in all personal actions to the Gold Commissioners in Kootenay and Cassiar, and appears to trench upon the provisions of the 96th section of the British North America Act, which vests the appointment of the Supreme and County Court judges in the Governor-General alone, inasmuch as it provides that the paid employees of the Local Government in the district afor esaid shall have and exercise almost as much power as a Supreme Court judge. As I think this Legislature has not the power in effect, to make these appointments, I would suggest that the Act be reserved for the consideration of His Excellency the Governor-General." I refer to the remarks made upon the Mining Court in connection with the 11th section of Act No. 14. This Bill is an illustration of the danger I have above alluded to, as, if it became law, the jurisdiction of the Mining Court in the districts referred to will be greater than the jurisdiction of the County Court, and equal to that of the Supreme Court.

It might be convenient that a somewhat extended jurisdiction should be given to a District Court or magistrates in the Districts of Kootenay and Cassiar, thereby avoiding the expense and delay attendant upon a judge of the Supreme Court travelling to these distant parts of the Province for the purpose of holding Assizes, and it is probable that this Bill was passed with that object in view. I would mention however, that even were this Bill assented to, it would be necessary for a Supreme Court judge to proceed to the district mentioned for the trial of criminal cases.

Upon the whole, I recommend that the assent of the Governor-General be not given to this Bill, which, in fact, should have been disposed of by the local authorities themselves.

The following are the remarks above alluded to : The sections of the Act now under consideration further extends the powers of Gold Commissioners as judges of the Mining Court. The 96th section of the British North America Act, 1867, empowers the Governor-General to appoint the judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick. By the 92nd section the Provincial Legislatures have power to make laws in relation to the administration of justice, including the constitution, maintenance and organization of Provincial Courts, both of civil and criminal jurisdiction. They have also power to legislate respecting the establishment and tenure of Provincial officers, and the appointment and payment of Provincial officers.

If there be power in the Legislature of British Columbia to establish this so-called Mining Court, and appoint and pay the judges thereof, it must be found in the section I have just quoted. I think, however, that this court, which is declared to have original jurisdiction, to be a court of law and equity, and a court of record with a specific seal, and for the purpose of enforcing its judgments, orders and decrees, to have (with certain exceptions), the same powers and authority, legally and equitably, as are exercised in the Supreme Court of Civil Justice of British Columbia by any judge thereof, which has power also to summon a jury to assess damages, may be considered a court within the meaning of the 96th section of the Confederation Act. It is not in my opinion necessary to bring a Provincial Court within the provisions of this section, that it should be called by the particular name of Superior, District or County Court.

The exception to that section itself indicates that the Courts of Probate in Nova Scotia and New Brunswick would, unless specially excepted, have come within the definition of Superior, District or County Courts.

It will be readily seen how easy it would be for the Local Legislature, by gradually extending the jurisdiction of these Mining Courts, and by curtailing the jurisdiction of the County Courts or Supreme Courts as now established, to bring within their own reach, not only the administration of justice in the Province, but also practically the appointment of the judges of the courts in which justice is administered. Inasmuch however as legislation of a similar nature to that contained in the section now under consideration, has been left to its operation in previous years, and as the provisions of the section appear to be convenient, I do not recommend a disallowance of the Act.

"C."

(Extracts from a Report on a former Act of this Province, respecting Algoma.)

[Annexed to the foregoing Report of the Minister of Justice, dated 20th January, 1880.]

"Were this the first enactment of a similar nature passed by a Provincial Legislature, I would hesitate long before recommending that it should be left to its operation, as it appears to intrench upon the powers conferred upon the Governor-General of Canada by the 96th section of the British North America Act, 1867, which section is as follows :—

"The Governor-General shall appoint the judges of the Superior, District and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick."

Inasmuch however, as Provincial legislation has been previously left to its operation, whereby certain judicial powers in civic matters have been conferred upon stipendiary magistrates, and whereby courts presided over by the stipendiary magistrates and having in effect the powers of the Division Courts of Ontario have been constituted, I do not feel at liberty to object to the provision of the present Act, provided the jurisdiction conferred by the former legislation upon the subject, which has been left to its operation, has not in effect been substantially extended.

In a report dated 29th September last, upon the Acts of last session of the Legislature of British Columbia, I had occasion to remark at some length upon legislation of a nature similar to that now under consideration, and I then pointed out the danger which might ensue from this class of legislation.

I refer to that report, the Act, 31st Vic., 1868, Ontario, chap. 35, which was passed to provide for the organization of the Territorial District of Muskoka, and under which the stipendiary magistrate of that district was appointed, declared that certain provisions of chapter 128 of the Consolidated Statutes of Upper Canada, intituled "An Act respecting the administration of justice in unorganized tracts," should extend and apply to the said District of Muskoka.

Similar provisions are contained in the Act 33rd Vic. (1869), Ontario, chapter 24, which provides for the organization of the Territorial District of Parry Sound, and in the Act 34 Vic. (1871), Ontario, chapter 4, which provides for the organization of the Territorial District of Thunder Bay. The provisions of the Act of the Consolidated Statutes, thus made applicable to these territorial districts, in effect provided for the holding of a court of civil jurisdiction in each district under the name and style of the first (or other as the case may be), Division Court for the District of D. C. over which the stipendary magistrate should preside and be the sole judge in all actions brought in such Division Court, and determine all questions as well of fact as of law in relation thereto, in a summary manner, with power, should he think fit, to summon a jury of five persons to try the fact controverted in a case.

For every such court provision is made for an appointment of a clerk and one or more bailiffs. The jurisdiction of the court is declared to be over all personal actions, save certain excepted ones where the debtor's damages claimed is not more than $100. Each court is to have a seal with which all summonses and other processes shall be sealed or stamped.

Suits are to be commenced by summons to the defendant issued by the clerk, containing the particulars of the plaintiff's demand.

Provision is made for the subpœnaing of witnesses; the judgment of the court with certain exceptions to be final and conclusive.

Provisions are made for the enforcement of the judgments by execution. Proceedings and suits against absconding debtors are provided for.

The magistrate is given jurisdiction on the consent of the parties to try and determine cases up to $800 in amount. In addition to the Act in the Consolidated Statutes above referred to, which has been made applicable to the three districts mentioned, certain provisions of the Act respecting Division Courts, being chapter 19 of the Consolidated Statutes of Upper Canada, and of the Act to amend the Acts respecting Division Courts, being chapter 23 of 32 Vic. (1868-9), Ontario, are made applicable to the Districts of Parry Sound and Thunder Bay. The provisions of the Act respecting Division Courts referred to, relate to examination of judgment debtor's claims of landlords to goods seized in execution.

The provisions of the Act 32 Vic. (1868-9), Ontario, amending the Acts respecting Division Courts, provide that all judgments in the Division Courts shall have and continue to have the same force and effect as judgments of courts of record. Provisions are made for the entry of final judgments by the clerk where the claim is not disputed, and proceedings for the garnishment of debts are provided for. It will be thus seen that the jurisdiction of the courts presided over by the stipendiary magistrates of the three districts above mentioned, was, before the passing of the Act now under consideration, practically as extensive as the jurisdiction of the various Division Courts in the Province, and in some cases was more extensive. The present Act does not therefore seem to extend to any substantial extent the jurisdiction previously possessed by those courts.

The section now under consideration however, not only declares that the stipendiary magistrate, as Division Court judge, shall have the like jurisdiction and powers as are now possessed by the County Court judges in Division Courts in counties, but goes on to provide that the provisions of law from time to time in force in Ontario relating to the Division Courts in counties and the officers thereof, etc., shall apply to the Division Courts of these districts. This provision is, I think, objectionable, inasmuch as although it may be quite within the legislative authority of Ontario to increase the jurisdiction of the Division Courts in counties, as such courts are now presided over by judges appointed by the Dominion, yet their jurisdiction might be increased to an extent that might be objectionable in the case of these District Division Courts, the judges of which are appointed by Ontario. Were the section limited in its operation to the jurisdiction and power, etc., of the County Court judges in Division Courts and counties as now existing, I would not, for the reasons above mentioned, recommend any interference with the Act.

I recommend, however, that the attention of the Lieutenant-Governor be called to the objection referred to, with a request that his Government may promote, at the next session, and before the time expires for determining as to the disallowance of the Act, amendatory legislation.

Report of a Committee of the Privy Council, approved by the Governor-General on the 12th February, 1880.*

The Committee have had under consideration a report dated 20th January, 1880, from the Honourable the Minister of Justice upon an Act passed by the Legislature of the Province of Ontario at its last session, intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."†

In concluding his report, the Minister submits whether this Act, which seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges, and which goes far beyond any previous Act of a similar character, should be disallowed, notwithstanding that other Acts equally objectionable on principle, but less objectionable in degree, have been left to their operation; and he states that, in his opinion, the Act should be disallowed, unless the same be repealed within the time for disallowance.

The Committee concur in the opinion above stated, and submit the same for your Excellency's approval.

Certified.

J. O. Coté,
Clerk, P. C.

The Under-Secretary of State to the Provincial Secretary.‡

Ottawa, 14th February, 1880.

Sir,—I am directed to transmit to you herewith for the information of His Honour the Lieutenant-Governor of Ontario, a copy of an Order of His Excellency the Governor-General in Council on the subject of an Act passed by the Legislature of that Province at its last session, intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."

I have the honour to be, Sir,

Your obedient servant,
Edouard J. Langevin,
Under-Secretary of State.

The Honourable the Provincial Secretary, Toronto.

---

* Sess. Papers, Ont., 1881, No. 30, p. 9.

† Ont. Stat., 42 Vict., cap. 19. Assented to 11th March, 1879.

‡ Sess. Papers, Ont., 1881, No. 30, p. 9.

ADDRESS OF THE LEGISLATIVE ASSEMBLY OF MANITOBA TO THE GOVERNOR-GENERAL.*

To His Excellency the Right Honourable Sir John Douglas Sutherland Campbell (commonly called the Marquis of Lorne), one of Her Majesty's Most Honourable Privy Council, Knight of the Most Ancient and Most Noble Order of the Thistle, and Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor-General of Canada and Vice-Admiral of the same, etc., etc., etc.

MAY IT PLEASE YOUR EXCELLENCY,—

We, Her Majesty's most dutiful and loyal subjects, the Legislative Assembly of Manitoba, in session assembled, humbly approach your Excellency for the purpose of representing—

That in the opinion of this Legislature the boundaries of the Province of Manitoba are too circumscribed, and that the same could be extended easterly, westerly, and northerly with advantage to the Dominion of Canada;

That this Legislature has already, at the suggestion of the Privy Council of Canada, passed an Act to provide for the enlargement of the limit of the Province, 37 Vic., cap. 2, Statutes of Manitoba;

That the sum placed at the disposal of the Province for the ordinary expenses of government is utterly inadequate to meet the just requirements thereof;

That in view of a readjustment of the financial relations of the Province with the Dominion being made to accord with the census returns of 1881, this Legislature deems the present a fitting time to respectfully request the Privy Council of Canada to take steps for the immediate enlargement of the Province, and that in connection therewith, such terms and conditions shall be granted and made as will be just and equitable, and will enable the executive authorities of the Province to provide for the suitable administration of its affairs, and to attend to the various public needs of the community, increased as these are by a rapidly augmenting population.

We, therefore, humbly pray that your Excellency will be pleased to take such steps as may be necessary to carry out the views of the Legislature.

G. McMICKEN,
Speaker.

Legislative Assembly,
Winnipeg, 14th February, 1880.

THE UNDER-SECRETARY OF STATE TO THE PROVINCIAL SECRETARY.†

OTTAWA, 17th February, 1880.

SIR,—With reference to my letter of the 14th inst., I am directed to transmit to you herewith for the information of His Honour the Lieutenant-Governor of Ontario, a copy of a report of the Minister of Justice and of its appendices, A, B, C, on the subject of the Act passed by the Legislature of Ontario at its last session, intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

The Honourable the Provincial Secretary,
Toronto.

---

* Return to an Address of the Ho. of Coms., Can., dated 15th March, 1882, numbered (82a), p. 7.

† Sess. Papers, Ont., 1881, No. 30, p. 10.

RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF ONTARIO, PASSED ON THE 3RD MARCH, 1880.*

That by an agreement made between the Government of Canada and the Government of Ontario, it was decided that, subject to the approval of the Parliament of Canada and the Legislature of Ontario, the questions which had arisen concerning the northerly and westerly boundaries of the Province of Ontario should be determined by arbitration; and that by Orders in Council, passed by the respective Governments, it was declared, that the determination of the Arbitrators appointed to make such award should be "final and conclusive."

That in accordance with the agreement entered into by the respective Governments, the Right Honourable Sir Edward Thornton, Her Majesty's Minister at Washington, the late Hon. R. A. Harrison, Chief Justice of Ontario, and the Honourable Sir Francis Hincks, were agreed upon by Orders in Council of the respective Governments, as Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario.

That on the 3rd day of August, 1878, the said Arbitrators delivered their award, wherein they declared and determined what are the northerly and westerly boundaries of the Province of Ontario.

That in a despatch dated 31st December, 1878, from His Honour the Lieutenant-Governor of Ontario, to the Secretary of State for Canada, His Honour intimated to the Government of Canada, that during the approaching session of the Legislature a measure would be introduced "to give effect by way of declaratory enactment or otherwise, to the award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario;" and that His Honour, in the same despatch, also stated he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at Ottawa in the next session of the Parliament of Canada.

That in a despatch dated 8th January, 1879, the Government of Canada acknowledged the receipt of the despatch last mentioned, and stated that the same would not fail to receive all due consideration; and that no intimation was given, in reply to His Honour's communication, that the Government of Canada would refuse to be bound by the award of the Arbitrators, or to submit to the Parliament of Canada a measure giving effect thereto.

That by an Act of the last session, the Legislature of Ontario did consent that the boundaries of the Province, as determined by the said award, should be declared to be the northerly and westerly boundaries of the Province of Ontario, and by a further Act made provision for the administration of justice in the northerly and westerly parts of Ontario.

That on the 16th January, 1869, the Government of the Dominion of Canada, through its members and representatives, contended before Her Majesty's Imperial Government that the western boundary "extended to and included the country between the Lake of the Woods and Red River," and that the northern boundary included "the whole region of Hudson's Bay."

That the boundaries then claimed by the Government of the Dominion, on behalf of Canada, as against the pretensions of the Hudson's Bay Company, would, on the same grounds, be the boundaries of the Province of Ontario, and would give to Ontario a territory vastly in excess of that embraced in the award of the Arbitrators.

That by an Order in Council, approved on the 28th November, 1871, the constitutional advisers of His Excellency the Governor-General of Canada, obtained the sanction of the Crown to the statement that "it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question, should be, as far as possible, expedited;" that by another Order in Council, approved on the 9th April, 1872, His Excellency's advisers obtained the assent of the Crown to the opinion that both Governments would "feel it their duty to settle, without delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary;" that by another Order in Council, approved on the 7th November, 1872, His Excellency's advisers

* Journals Leg. Ass., 1880, Vol. 13, p. 160.

obtained the further sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits, to the north and to the west, of the Province of Ontario had already been affirmed by a Minute in Council," and "that the establishment of criminal and civil jurisdiction and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensible."

That although so long since as the 12th November, 1874, and as the result of protracted negotiations, the Government of Canada, by Order in Council, consented to concur in the proposition of the Government of Ontario to determine the northern and western boundaries of Ontario by means of a reference; and although information was from time to time given to Parliament by the Government of Canada of the progress of the arrangements for such reference, no action was taken, nor was any effort made by or in the Parliament of Canada, previous to the award being given, to arrest or prevent the reference agreed upon by the respective Governments of Canada and Ontario; that in May, 1878, the Parliament of Canada granted $15,000 to defray the expenses of the Ontario Boundary Commission.

That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the Arbitrators, the Government of Canada has hitherto failed to recognize the validity of the said award, and that no legislation has been submitted to Parliament by the Government of Canada for the purpose of confirming the said award.

That nevertheless it is, in the opinion of this House, the duty of the Government of Ontario to take such steps as may be necessary to provide for the due administration of justice in the northerly and westerly parts of Ontario, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of Ontario, that the rights of this Province, as determined and declared by the award of the arbitrators appointed by the concurrent agreement and action of the Governments of Canada and Ontario, should be firmly maintained.

That this House will at all times give its cordial support to the assertion, by the Government of Ontario, of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the Arbitrators by which the northerly and westerly boundaries of this Province have been determined.

The Resolutions were carried on the following division:

Yeas.—Messieurs Appleby, Awrey, Badgerow, Ballantyne, Baxter, Bell, Bishop, Blezard, Boulter, Broder, Calvin, Cascaden, Chisholm, Creighton, Crooks, Dryden, Field, Fraser, Freeman, French, Gibson (Huron,) Gibson (Hamilton), Graham, Hardy, Hawley, Hay, Jelly, Kerr, Laidlaw, Lauder, Livingston, Long, Lyon, McCraney, McKim, McLaughlin, McMahon, Mack, Meredith, Metcalfe, Monk, Morgan, Morris, Mowat, Nairn, Near, Neelon, Pardee, Parkhill, Paxton, Richardson, Robinson (Cardwell), Ross, Sinclair, Springer, Striker, Tooley, Waters, Watterworth, White, Widdifield, Wigle, Wood, Young—64.

Nay.—Mr. Miller—1.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 13th March, 1880.

SIR,—Adverting to the letters of Mr. Under-Secretary Langevin to the Honourable the Provincial Secretary of Ontario, under date the 14th and 17th ultimo, and their respective enclosures, I have the honour to request that you will inform me whether your

* Sess. Papers, Ont., 1881, No. 30, p. 10.

Government intends to address to this Government any communication with reference to the Act, cap. 19, 42 Vic. (1879), "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."*

I have the honour to be, Sir,

Your obedient servant,

J. C. Aikins,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

Report of the Attorney-General of Ontario, 15th March, 1880, on the Ontario Act respecting the Administration of Justice in the Northerly and Westerly Parts of Ontario.†

The undersigned respectfully submits the following observations on a despatch of the Under-Secretary of State, dated the 14th day of February ultimo, transmitting a copy of an Order of His Excellency the Governor-General in Council, concurring in a Report of the Honourable Minister of Justice, wherein it is stated, that, in the opinion of the Minister, an Act passed by the Legislature of this Province at its last session, entitled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," should be disallowed, unless the same were repealed within the time for disallowance. The undersigned has also had under consideration a copy of the said report, transmitted in a subsequent despatch, dated the 17th day of February.

The objections suggested to the Act, in the Report of the Minister of Justice, are these :—

(1) That the Act is "based on the assumption that the award of the Right Honourable Sir Edward Thornton, the Honourable Sir Francis Hincks, and the late Chief Justice Harrison, respecting the northerly and westerly boundaries of Ontario, settles such Boundaries;" and (2) that (independently of that question) the Act "seems to encroach upon the powers of the Dominion Government, with respect to the appointment of judges, and goes far beyond any previous Act of a similar character."

With respect to the first objection, it is matter of profound disappointment that, after the exhaustive investigation which the question of our northerly and westerly boundaries received, and the unanimous decision, eighteen months ago, by the distinguished and able gentlemen selected as arbitrators, the Government of the Dominion is not yet prepared to abide by the award, or to recognize the just rights of the Province which the award established; but the Honourable the Minister of Justice appears to have overlooked that the Act in question (while making no allusion whatever to the award) assumes no more with regard to the extent of our territory than that we have *some* territory west of "a line known as the provisional westerly boundary line of Ontario," and *some* territory north "of the height of land separating the waters which flow into Hudson's Bay from those which flow into Lake Superior and the Georgian Bay." Now, independently of a mass of other proofs in favour of Ontario's claim, our right to territory as far west as the Lake of the Woods, and as far north as the boundary or shore of Hudson's Bay, is demonstrated by the terms of the Royal Commissions, from the 27th December, 1774, to Sir Guy Carleton, Captain-General and Governor-in-Chief of the Province of Quebec, and the subsequent commissions to successive Governors-General, to the commission to Lord Elgin, of the 1st October, 1846, being the last of the com-

---

* [See, in order of date, pp. 378, 384, 385 and 387, *ante*, the Report of the Minister of Justice, dated 20th January, 1880; the Dominion Order in Council approving thereof, dated 12th February, 1880; and the communications of 14th and 17th February, and 13th March, 1880, respectively—all relating to the disallowance of the Act in question.—G. E. L.]

† Sess. Papers, Ont., 1881, No. 30, p. 11.

missions to our Governors-General which contained boundary line descriptions. There is far more reason for maintaining that the award gave us too little, than for maintaining that it gave us too much; and it gave us considerably less than Dominion Ministers had claimed before the purchase of the rights of the Hudson's Bay Company. The Minister of Justice does not, however, advise the disallowance of the Act on this ground, but advises its disallowance upon the ground of the other objection which he suggests, namely, that the Act "seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges, and goes far beyond any previous Act of a similar character."

The undersigned is respectfully of opinion that this objection has arisen from inadvertence, as he will now proceed to shew.

The Minister refers altogether to the 6th section of the Act, and to the jurisdiction which it confers on the District Court of Algoma—"a Court," he observes, "the judge of which is appointed by the Lieutenant-Governor, and the salary and allowances of whom are fixed by the Provincial Legislature." Now, the fact is, that by the British North America Act, it is provided that the Governor-General has the appointment of the judges, not only of Superior and County Courts, but of District Courts also; and the 100th section provides that the salaries and allowances of the judges of District Courts are, like those of the Superior and County Court judges, to be fixed and provided by the Parliament of Canada. These sections have always been held to apply to the judge of the District Court of Algoma; and accordingly, ever since Confederation, his salary has been provided by the Parliament of Canada, and not by this Province. The present judge was appointed previous to Confederation; and it has not before been suggested that the Lieutenant-Governor has the power of appointing his successor, or that the Provincial Legislature has anything to do with his salary or allowances. The undersigned respectfully submits that there is no ground whatever for either suggestion.

The Minister refers also to the 10th, 14th, and 15th sections of our Act. The 14th section relates to the costs in the District Court; and the 10th and 15th provide for the appointment of certain additional officers for the transaction of the business of the same Court; namely, a Deputy Clerk and a Sheriff. The undersigned assumes that the right of the Province to pass these sections was not intended to be questioned by the Minister or by the Dominion Government.

The only other suggested encroachment "upon the powers of the Dominion Government with respect to the appointment of judges," is the jurisdiction which the Act gives to stipendiary magistrates, these officers being appointed by the Lieutenant-Governor. The Minister observes that several of the Provinces "of Canada have, since Confederation, provided for the appointment of officers called Magistrates, Stipendiary Magistrates, Commissioners, etc., and have given to these officers certain judicial functions." As illustrative of this statement, the Minister refers to an Act of the Legislature of British Columbia, respecting the Gold Commissioner's Court in that Province; which Act purported to give to the Gold Commissioner, who was a local officer to be appointed by the Lieutenant-Governor, very extensive jurisdiction in civil matters. But, as respects this Province, the office of stipendiary magistrate was not created since Confederation, but had existed under our laws for many years previously. These officers are for unorganized tracts, where the population is too sparse, and the transactions are too limited, to require or justify the holding of Courts of Assize or County Courts; and the object or policy was, and is, to provide by such means for the due administration of justice in such territories until the population and transactions should become such as to require and justify other judicial arrangements. Under the law in force for this purpose at the time of Confederation (C. S. U. C., chap. 128), a stipendiary magistrate had part of the jurisdiction which, in the more settled portions of the Province, belonged to County Court judges, and part of that which, in the more settled portions, belonged to the Superior Courts. By the 13th section of the Act, Stipendiary Magistrates were authorized to hold Division Courts, which, elsewhere in the Province, were held by County Court judges; and by the 23rd section, jurisdiction was given to them in all personal actions (save as hereinafter excepted) where the debt or damages did not exceed $100. In Division Courts, presided over by County Court judges (C. S. U. C., chap. 19, Sec. 55), it was only as to

claims and demands of a specified kind that the jurisdiction existed to try cases of that amount; while in other personal actions, the jurisdiction was confined to cases where the debt or damages claimed did not exceed $40. By the 74th and 75th sections of C. S. U. C., chap. 128, a stipendiary magistrate had jurisdiction, by consent of parties, to refer to arbitration matters in dispute, "within the jurisdiction of the Court as to subject-matter, but irrespective of amount, if not exceeding $800;" the arbitration to be "to such persons, and in such manner, and in such terms, as he may think reasonable and just." The stipendiary magistrate had jurisdiction also to set aside the award, or to enforce it as a judgment of his court—an authority which, in the case of so large an amount, belonged, elsewhere in the Province, to a Superior Court or judge only.

Such was the jurisdiction of these temporary officers when the British North America Act was passed; and yet, their appointment, or the duty of providing for their salaries and allowances, was not given to the Dominion authorities, and therefore fell to the Province. Whether, if the office were a new one, unknown before Confederation, or if a stipendiary magistrate had, by law, before Confederation, no part of the jurisdiction which was exercised elsewhere by judges of the Superior or District or County Courts, the Legislature would have had jurisdiction to create the office, or to give to the holder of it the jurisdiction mentioned, is another question altogether; but it is plain, under the British North America Act, that, as respects our distant outlying and sparsely populated territories, it is no encroachment on Dominion authority to assign to stipendiary magistrates some of the authority belonging elsewhere in the Province to Courts the appointment of whose judges, and payment of whose salaries, are given to the Dominion.

Before Confederation, the provisions of the Act last mentioned were in operation in the District of Nipissing. Immediately afterwards, the opening up and partial settlement of Muskoka and Parry Sound rendered desirable the extension of the same provisions to these territories. This could, under the Act, have been legally done by proclamation of the Lieutenant-Governor, without further legislation; but an Act of the Legislature in each case was preferred, and was passed (31 Vic., chap. 35; 33 Vic., chap. 24). Subsequently, similar provisions were in the same way extended to Thunder Bay, by 34 Vic., chap. 4. These statutes were passed by the first Legislature of Ontario, and while the late Honourable John Sandfield Macdonald was Attorney-General of Ontario, and Sir John A. Macdonald was Minister of Justice. The report on the Act now in question does not name these Acts, but names a subsequent Act of Ontario, passed in 1877, by which similar provisions had been applied to the Provisional County of Haliburton.

With reference to these Acts, it may be observed here that the legislation of the Parliament of Canada respecting Keewatin and the North-West Territory, shews that the Parliament of the Dominion agrees, as well with the Parliament of the old Province of Canada, as with the Legislature of Ontario in 1868, 1869, 1871, and 1877, that exceptional legislation is required for territories so thinly populated as those in question. The jurisdiction which the Ontario Act of last session conferred upon the stipendiary magistrates therein mentioned is not nearly so great as that conferred by Dominion statutes upon similar magistrates in the territories of the Dominion.

The undersigned further respectfully submits, that, as the administration of justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, belongs exclusively to the Provincial Legislature, it is to this Province alone that the right belongs of determining what the extent, from time to time, should be of the jurisdiction of these temporary officers. The Act in question, however, did not extend their jurisdiction in our undisputed territory in case of money demands, but merely gave a much-needed authority in a few other matters as to which otherwise the people would have no practicable remedy. Thus the 19th section gave to the stipendiary magistrates the authority which is conferred upon County Court judges elsewhere by the statute respecting over-holding tenants, an authority ordinarily exercised by those judges in Chambers. A reference to R. S. O., chap. 137, sec. 3, will show that this jurisdiction only exists where tenants over-hold without colour of right, and the 6th section provides for the action taken being subject to the supervision of the Superior Courts.

With respect to any territory which Ontario may have west of the provisional boun-

dary line or north of the height of land, the jurisdiction given to the stipendiary magistrate sitting in a Division Court is by the 8th section increased from $100 to $200 in certain classes of cases, namely, in suits relating to debt contract and covenant, or to $400, where the amount is ascertained by the signature of the defendant; provided, however, that the contract or covenant was made within the limit for which the Court is held, or provided the cause of action arose therein, or the defendant resides therein. The purchasing power of $200 in this territory now is less than of $100 when that sum was named. Jurisdiction is also given in minor cases between landlord and tenant, and in replevin, where the value of the goods claimed does not exceed $100; an appeal is provided for from the decision of the magistrate where the amount claimed is $200 or upwards, or where title to land or other corporeal property is in question (section 16, sub-section 4); and, on the other hand, various matters are excluded from the jurisdiction of the Magistrate, namely, actions for gambling debts, for spirituous or malt liquors, for malicious prosecution, libel, slander, criminal conversation, seduction, or breach of promise of marriage, and actions against a justice of the peace for anything done by him in the execution of his office, if he objects thereto. These provisions show that the Legislature has carefully refrained from trusting to the decision of the stipendiary magistrate matters likely to be of an important nature, and has guarded the rights of parties by providing a convenient mode of appeal where the money or property in question appears sufficient to justify an appeal.

These considerations make it plain that the present Act bears no analogy to the British Columbia Act, which purported to confer upon Mining Courts jurisdiction in all personal actions arising within the limits of their respective districts.

The undersigned trusts that, in view of these considerations, the Government of Canada will perceive that the Act in question is not objectionable on any ground urged against it, and that its disallowance is not necessary, and would not, under all the circumstances, be a proper exercise of Dominion authority.

The despatch was received when the recent session of the Legislature was far advanced, and it appeared necessary therefore to provide at once for the contingency of the disallowance, it being assumed that the Dominion Government, in common with the Province, felt and would recognize the propriety of some provision being made for the administration of justice, instead of the territory in question being left to utter lawlessness and anarchy. A new Act was accordingly passed, which is not to go to into effect unless and until the former Act is disallowed. The new Act confines the jurisdiction of the stipendiary magistrates, as regards subject-matter and amount, to the limits provided for by the law in force before Confederation, and avoids any disputable reference to the extent of territory within which the Act is to operate, leaving that question to be wholly determined, as may be, by the law and the right.

As the territory in dispute is included in the territory which the Province of Canada before Confederation claimed as part of Canada, and therefore of Canada West, or Upper Canada; and in the territory to which the Dominion, through its Ministers, after Confederation, and until the purchase from the Hudson's Bay Company, made the same claim, and on the same grounds; and which territory the Province of Ontario continued afterwards to claim; and as the territory, still it seems in dispute, was eighteen months ago solemnly awarded to the Province as its rightful property by the unanimous decision of three arbitrators of the highest character and competency, who had been mutually chosen by the two Governments,—it is obvious that the *prima facie* right to the territory, if not (as we insist) the certain and absolute right, is, and must be taken to be, in Ontario; and it is the consequent obvious duty of the Province to make such reasonable provision as may be practicable for the administration of justice among the population of the territory. The dispute or delay on the part of the Dominion with respect to the award causes uncertainty and its daily increasing and grave evils in connection with the administration of justice; and if the dispute or delay is to continue, the undersigned is respectfully of opinion that the evils referred to, which all must regret, will be intensified by the disallowance of the Provincial legislation, and that their removal, or partial removal, calls rather for provisional legislation by the Dominion (without prejudice to the matter in dispute), expressly giving to the laws of Ontario and its officers authority in the terri-

tory, pending the dispute by the Dominion, or pending the settlement and recognition of the true boundaries.

The undersigned respectfully recommends that, in case the views which the undersigned has expressed are concurred in by His Honour in Council, a copy of this Report be forthwith transmitted to the Secretary of State, with a copy of the Act passed on the subject at the recent session of the Legislature.

O. Mowat.

March 15th, 1880.

Order in Council, approved by the Lieutenant-Governor, the 15th day of March, 1880.*

The Committee of Council advise that your Honour do approve of the annexed report of the Honourable the Attorney-General with respect to a despatch of the Under-Secretary of State, dated the 14th day of February, having reference to an Act of the Legislature of Ontario, entitled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," being 42 Victoria, chapter 19.

Certified.

J. G. Scott,
Clerk Executive Council, Ontario.

The Lieutenant-Governor to the Secretary of State.†

Government House,
Toronto, 15th March, 1880.

Sir,—I have the honour to transmit herewith for the information of His Excellency the Governor-General in Council a copy of an Order in Council approved by me this day, together with the annexed report of the Honourable the Attorney-General with respect to the despatch of the Under-Secretary of State, dated 14th February last, having reference to an Act of the Legislature of Ontario, entitled, "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," being 42 Victoria, chapter 19.

I have the honour to be Sir,

Your obedient servant,

D. A. Macdonald,
Lieutenant-Governor.

The Honourable the Secretary of State,
Ottawa.

Further Report of the Minister of Justice.‡

Ottawa, 17th March, 1880.

I have the honour to report—That, under the Order in Council of the 12th February, respecting an Act passed by the Legislature of Ontario at its session of 1879, intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," it was provided that, unless the same were repealed within the time for disallowance, it should be disallowed.

---

* Sess. Papers, Ont., 1881, No. 30, p. 11. † *Ibid.*, p. 10. ‡ *Ibid.*, p. 15.

A copy of my Report, and of the Order in Council passed thereon, were transmitted in due course to the Ontario Government. A reply has just now been received, from which it would appear that the Act has not been repealed, but that another Act, making provision for the administration of justice in the locality, has been passed, but which Act is not to go into operation unless and until the Act now under consideration be disallowed.

The Attorney-General of Ontario states, that "the new Act confines the jurisdiction of stipendiary magistrates, as regards subject-matter and amount, to the limits provided for by the law in force before Confederation, and avoids any disputable reference to the extent of the territory within which the Act is to operate, leaving that question to be wholly determined as may be by the law and the right."

I have not yet had an opportunity of seeing this Act, and therefore pass no opinion with respect to it. It will have to be considered and reported upon in the usual way.

Pursuant to the provisions of the Order in Council of the 12th February, I think the Act passed by the Legislature of the Province of Ontario, first above referred to, should be disallowed, and I recommend accordingly.

Before closing this report I desire to refer to some of the remarks of the Attorney-General of Ontario with respect to the Act.

In my previous report I pointed out two grounds upon which it was necessary to take action with respect to the allowance or disallowance: the first being on account of its assuming to make provision for the administration of justice over territory the right of Ontario to which is not admitted by this Government; the second was, that the Act encroached upon the powers of the Dominion Government with respect to the appointment of judges.

It is unnecessary to reply to the arguments adduced by the Attorney-General with respect to the boundaries of Ontario, as any discussion thereon, upon a reference of this kind, would seem to be inopportune.

With respect to the second ground, however, the Attorney-General points out that the provisions respecting the "District Court" referred to in the Act were intended to apply only to the court presided over by the judge resident in Sault Ste. Marie, who received his appointment before Confederation, and whose successor would have to be appointed by the Governor-General, and that the provisions respecting this court do not apply to the court presided over by the stipendiary magistrates referred to in the Act.

In this view, so much of the Act as relates to that District Court would not seem to be open to the same objections as those portions which refer to the stipendiary magistrates, but the objections pointed out in my previous report to those portions of the Act which refer to the stipendiary magistrates and the courts presided over by them still remain, and of themselves, in my opinion, would warrant the disallowance of the Act.

The Attorney-General remarks, in referring to the disputed boundary question, that "the Minister of Justice does not, however, advise the disallowance of the Act on this account, but advises its disallowance upon the grounds of the other objection which he suggests, namely, that the Act seems to encroach upon the powers of the Dominion Government with respect to the appointment of judges."

It would seem immaterial upon which of the two grounds the disallowance was recommended; but I would point out that the recommendation in my report was a general one, and was not confined to either ground.

JAS. McDONALD,
Minister of Justice.

ORDER OF THE GOVERNOR-GENERAL IN COUNCIL.*

GOVERNMENT HOUSE,
OTTAWA, Monday, 22nd day of March, 1880.

Present—His Excellency the Governor-General in Council.

Whereas the Lieutenant-Governor of the Province of Ontario, with the Legislative Assembly of that Province, did, on the 11th day of March, 1879, pass an Act (chapter 19), intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario;"

And whereas the said Act has been laid before the Governor-General in Council, together with a Report from the Minister of Justice, setting forth that he is of opinion that it was not competent for the Legislature of the Province of Ontario to pass such Act, and therefore recommending that the said Act should not receive the confirmation of the Governor-General;

His Excellency the Governor-General has thereupon this day been pleased, by and with the advice of his Privy Council, to declare his disallowance of the said Act, and the same is hereby disallowed accordingly.

Whereof the Lieutenant-Governor of the Province of Ontario, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

J. O. COTÉ,
Clerk, Privy Council.

CERTIFICATE OF THE GOVERNOR-GENERAL.*

I, Sir John Douglas Sutherland Campbell, commonly called the Marquis of Lorne, Governor-General of Canada, do hereby certify that the Act passed by the Legislature of Ontario the 11th day of March, 1879 (chapter 19), intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," was received by me on the 26th day of March, 1879.

Given under my hand and seal this twenty-second day of March, 1880.

LORNE.
[Seal.]

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 22nd March, 1880.

SIR,—I have the honour to transmit to you herewith, for the information of your Government, an Order of His Excellency the Governor-General in Council disallowing an Act passed by the Legislature of the Province of Ontario on the 11th day of March, 1879 (chapter 19), intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario."

I have the honour to be, Sir,
Your obedient servant,

J. C. AIKINS,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

---

* Sess. Papers, Ont., 1881, No. 30, p. 16.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE.*

GOVERNMENT HOUSE,
TORONTO, 25th March, 1880.

SIR,—Adverting to your letter of the 22nd March, forwarding an Order of His Excellency the Governor-General in Council, disallowing an Act passed by the Legislature of this Province on the 11th instant, intituled "An Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario," I have the honour to request you to forward to me a copy of the Report of the Minister of Justice therein alluded to.

I have the honour to be, Sir,
Your obedient servant,

D. A. MACDONALD,
Lieutenant-Governor.

The Honourable the Secretary of State (Canada),
Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

OTTAWA, 30th March, 1880.

SIR,—In compliance with the request contained in your despatch of the 25th inst., I have the honour to transmit to you herewith a copy of the Report of the Honourable the Minister of Justice upon which the Order of His Excellency the Governor-General of the 22nd inst., disallowing the Act of the Legislature of the Province of Ontario, entitled "An Act respecting Administration of Justice in the Northerly and Westerly parts of Ontario," was passed.

I have the honour to be, Sir,
Your obedient servant,

J. C. AIKINS,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario.

MR. LYON, STIPENDIARY MAGISTRATE, TO THE DEPUTY ATTORNEY-GENERAL, ONTARIO.‡

RAT PORTAGE, April 15th, 1880.

J. G. SCOTT, ESQ.,
Deputy Attorney-General.

SIR,—I received your letter of the 5th instant to-day. I received your letter of the 16th March last by the former mail, but as the carrier returned immediately I had no opportunity of answering it; and further, I considered that any description that I could give you of the divisions for Division Court purposes would be of little use without a map. I have had one prepared, and herewith enclose it to you. You will see from the map the intention is that all who can come conveniently to Rat Portage on Division Court business by the Pacific Railway and the waters running into the Lake of the

* Sess. Papers, Ont., 1881, No. 30, p. 16. † *Ibid.*, p. 17. ‡ Sess Papers, Ont., 1882, No. 23.

Woods from the north-east, as well as any residents to the west, will belong to the Rat Portage Division; and all those residing south of the railway from the line on the map or the waters that flow into Rainy Lake and Rainy River will belong to the Fort Frances Division.

From my knowledge of the country, I believe it is the best division of the territory that can be made. I also have the opinion of Mr. Mather, the Hudson's Bay Factor, and others, who are of the same opinion.

I am Sir,

Your obedient servant,

W. D. Lyon.

The Attorney-General of Ontario to the Minister of Justice with respect to Interim Legislation.*

Toronto, April 23rd, 1880.

Dear Sir,—Since our conversation at Ottawa with reference to the steps to be taken for the administration of justice in the disputed territory in the North-West, I have given to the matter some further consideration, and as your Government is not yet prepared to concede our right to the territory, I have drafted a Bill, which I send herewith, embodying the provisions which seem to me necessary or desirable for the government of the territory in the meantime.†

The Supreme Court has decided that your Parliament has power to pass a prohibitory liquor law, and I presume it is of special importance that no intoxicating liquors should be sold along the line of the Pacific Railway. Your claim to the territory up to the meridian of the confluence of the Ohio and Mississippi implies a claim that the Keewatin law as to intoxicants extends to that meridian; but as by the decision of the Supreme Court you have power to make that law or a similar law applicable, whether your claim to the territory is well founded or not, I suggest an enactment declaring in express terms that the Act, or such modification of it as you may prefer, is to have effect whether such territory is within Ontario or Keewatin.

If you do not consider it advisable that a prohibitory law should be in force so far east, then, to avoid clashing, I suggest that Parliament confer on the License Commissioners of Ontario for Thunder Bay the right to issue licenses in so much of the disputed territory as is not to be covered by the prohibition.

As the jurisdiction in regard to criminal procedure in every part of the Dominion belongs to the Dominion Parliament, I suggest as, on the whole, the more convenient course with respect to the disputed territory, that, in the territory west of what was formerly the provisional boundary, ordinary criminal cases be disposed of according to the procedure in force at Keewatin, and in the territory east of the line according to the procedure in force in other parts of Ontario. I suggest this as a rule to be acted upon as far as practicable without being embodied in a legislative enactment; authority to be given to justices, etc., of Keewatin and of Thunder Bay or Algoma, to act in any part of the disputed territory.

A Bill now before Parliament provides for the committal of criminals to gaol either at Prince Arthur's Landing or at Winnipeg. To provide for cases where the summary procedure applicable to Keewatin is not considered sufficient, you might enact that any person charged with crime may be tried in either Manitoba or Ontario, and in any county or district of either of these Provinces.

You are aware that a man named Horn is in custody at Prince Arthur's Landing, charged with murder. I do not at present know sufficient of the facts of the case to

---

* Sess. Papers, Ont., 1881, No. 30, p. 17.

† [For this draft Bill, see p. 397, *post*.—G. E. L.]

determine whether it will be more convenient to try him where the murder took place or at Prince Arthur's Landing. If the latter course is decided upon, the trial had better be before Commissioners of Oyer and Terminer. The Chief Justice of Manitoba would not care to come so far east from Winnipeg in order to try the case. I do not know what ordinances have been issued for the administration of justice in Keewatin, but I assume that a murder case ought to be tried by a judge. In case you issue a commission for this purpose, we would issue a commission to the same Commissioners and in the same terms, according to the course taken under preceding Governments, to avoid unnecessary questions as to the proper authority for issuing such commissions.

The Court of Queen's Bench, in the case of Regina *vs.* Amer (42 U. C. R., 391), decided that the District Judge of Algoma could be commissioned to hold a Court of Oyer and Terminer and General Gaol Delivery, but Mr. Justice Cameron was counsel for the Amers, and was not satisfied with the judgment; he might take the same view as a judge; and there is a possibility that the Supreme Court might not decide as our Court of Queen's Bench did. The point taken was, that the Act C. S. U. C., cap. 11, sec. 2, prevented the Crown from issuing a Commission of Oyer and Terminer addressed to any one not named in that section, and that as a District Judge is not expressly named, Judge McCrae, the District Judge, could not be nominated. As it is not likely that our Superior Court judges will go so far west to hold Assizes for some years to come, I suggest an Act settling this question so far as Parliament has jurisdiction to do so. I send a short Bill for this purpose.

In regard to civil matters, to assume or declare that the Keewatin law as to civic procedure shall be in force in any part of the disputed territory would put it in the power of any suitor to raise the boundary question, as, if our claim of boundary is correct, such an enactment would be *ultra vires*. I think, therefore, that for the determination of civil rights, you will find it the convenient and indeed only practicable course, to confirm, in reference to the disputed territory, the jurisdiction of our stipendiary magistrate (sec. 43, Vict. cap. 12, sec. 3), and to provide that matters beyond his jurisdiction shall be determined in the District Court of Algoma where the cause of action is within the jurisdiction of that Court (*Ib.* sec. 5). Where the matter is beyond the jurisdiction of the District Court of Algoma, authority to try in any Superior Court of Ontario, and in any county, should be given.

I presume, since your Government declines to admit our title, you will pay the expenses of the administration of justice in the disputed territory so long as it is disputed.

Yours truly,

O. Mowat.

The Honourable James McDonald, Minister of Justice,
Ottawa.

Draft Bill, enclosed in the Letter of the Attorney-General of Ontario to the Minister of Justice, 23rd April, 1880.*

[Such of the provisions of this draft Bill as are printed in the ordinary Roman character were adopted by the Minister of Justice and incorporated in the Dominion Act, 43 Vic., cap. 36; those provisions which are printed in Italics were not so incorporated. The Dominion Act in question will be found at p. 400, *post*. —G. E. L.]

DRAFT BILL.

An Act for the Administration of Justice in the Territory in Dispute between the Governments of the Province of Ontario and of the Dominion of Canada.

Whereas the territory described in the schedule hereto is claimed by the Government of Ontario as being within the said Province; and whereas such claim is disputed; and whereas the Parliament of Canada is desirous of making suitable provision

[* See the letter, p. 396, *ante*.—G. E. L.]

for the administration of justice within the said territory until the dispute is determined :

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. All crimes or offences committed in any part of the said territory, may be inquired of, tried and punished within any county or district in the Province of Ontario, or the Province of Manitoba, or in the District of Keewatin, and such crime or offence shall be within the jurisdiction of any court, judge, magistrate, or magistrates, or justice or justices, or other functionary having jurisdiction over crimes or offences of the like nature committed within the limits of the county or district in which such crime or offence is prosecuted ; and such court, judge, magistrate or magistrates, justice or justices, or other functionary, shall proceed thereon by way of preliminary investigation, and to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner as if such crime or offence had been committed within the county or district where such trial is had.

2. Such crime or offence shall be sufficiently laid and charged, whether it is laid and charged to have been committed in Ontario or in Keewatin, and any sentence which might have been imposed upon the offender, had the offence been committed either in an undisputed part of Ontario or in an undisputed part of Keewatin, may be imposed upon an offender convicted under this Act.

3. The two next preceding sections shall apply to any crime or offence heretofore committed as well as to every crime or offence hereafter committed in the said territory.

4. Where any person charged with the commission of any crime or offence within the territory above described, is in custody in any gaol within the Province of Ontario, or within the Province of Manitoba, charged with the said crime or offence, and it is intended that such person shall be tried in a Province other than the Province in a gaol of which he is confined, or in a different part of the same Province, then any judge of any Superior Court of the Province, in a gaol of which such prisoner is confined, having criminal jurisdiction, or any such court, on application by or on behalf of the Minister of Justice, or of the Attorney-General of Ontario, or in case the prisoner is in custody at Prince Arthur's Landing, and it is intended to try him at Sault Ste. Marie, then the judge of the District of Algoma, on application as aforesaid, may make an order upon the keeper of such gaol to deliver the said prisoner to the person named in such order to receive him ; and such person shall, at the time prescribed in such order, convey such prisoner to the place at which he is to be tried, there to remain in custody subject to the order of the court by which it is intended he shall be tried, or of any other court which may have jurisdiction to try him. In case the prisoner is confined in any gaol or lock-up in the said disputed territory, any judge of a Superior Court of Ontario or Manitoba having criminal jusrisdiction may make the like order.

5. The judge or court on granting the said order, may, if the judge or court thinks fit, direct that unless the prisoner is tried within a time limited in the said order, he shall be either discharged from custody on his own recognizance, or on bail, or returned forthwith to the said gaol from which he was taken, as the said judge or court may consider proper, and the terms of the said order shall be duly obeyed ; provided that the judge, or any other judge of the same court, or the court, may, at any time, upon application made in that behalf, vary the terms of the said order.

6. *The District Court of the District of Algoma and Division Courts heretofore established or which may be hereafter established for the District of Thunder Bay, and the judges and officers of such courts, and the sheriff of the District of Thunder Bay, shall have authority and jurisdiction within and over the said territory, in the same manner and to the same extent as such court, judges, sheriff, and officers would have authority and jurisdiction within and over such territory if the right of Ontario thereto was undoubted and undisputed ; and the process of the said courts may be executed therein.*

7. *Causes of action arising within the said territory, but not within the jurisdiction of the said District or Division Courts, may be prosecuted and tried in any Superior Court of the Province of Ontario, and in any county or district in the said Province, and the process of the said courts may be executed therein.*

8. *In all matters of controversy in the courts mentioned in the two next preceding sections, the laws of the Province of Ontario in force in the said District of Thunder Bay shall govern.*

9. *The seventy-fourth section, headed "Prohibition of Intoxicants," of the Act passed in the thirty-eighth year of Her Majesty's reign, entitled "An Act to amend and consolidate the laws respecting the North-West Territories," shall, with the substitution of "the Lieutenant-Governor of Ontario," for "the Lieutenant-Governor of the said territories or of the Lieutenant-Governor of Manitoba, under regulations to be from time to time made by the Governor in Council," where such words occur in the said section, as amended by the Act passed in the thirty-ninth year of Her Majesty's reign, and chaptered twenty-two, apply to and be in force in all that portion of the said territory hereinbefore described lying west of*

(In case preceding section does not apply to all the territory mentioned in the schedule, add the following :—)

10. *The provisions of the Revised Statute of Ontario, entitled "An Act respecting the sale of Fermented or Spirituous Liquors" shall, so far as the same are in force in the District of Thunder Bay, be in force in that part of the territory hereinbefore described lying east of*

as if such provisions were re-enacted herein with respect to such territory ; and the License Commissioners appointed by the Lieutenant-Governor of Ontario for the District of Thunder Bay, or for any part thereof, shall have authority to issue licenses having force in the said last described territory.

11. *Every stipendiary magistrate and justice of the peace heretofore or hereafter appointed by the Lieutenant-Governor of Ontario, having authority within the District of Thunder Bay, shall have the like authority within the said territory for the enforcement of laws in force therein, in respect of which a stipendiary magistrate or justice of the peace has jurisdiction, as he possesses within the said District of Thunder Bay for the enforcement of laws in force in the said district ; and every stipendiary magistrate or justice of the peace having authority within the District of Keewatin shall have the like authority within the said territory for the enforcement of laws in force therein, in respect of which a stipendiary magistrate or justice of the peace has jurisdiction, as he possesses within the said District of Keewatin for the enforcement of laws in force in the said district.*

SCHEDULE.

All that territory west of the meridian of the confluence of the Ohio and Mississippi, and described as follows, that is to say : Commencing where the Albany River is intersected by the said meridian ; thence up the middle of said Albany River, and of the lakes thereon, to the source of the said Albany River at the head of Lake St. Joseph ; thence by the nearest line to the easterly end of Lac Seul, being the head waters of the English River ; thence westerly, through the middle of Lac Seul and the said English River, to a point where the same will be intersected by a true meridional line drawn northerly from the international monument placed to mark the most north-westerly angle of the Lake of the Woods, by the recent Boundary Commission between Great Britain and the United States; and thence due south, following the said meridional line to the said international monument ; thence southerly and easterly, following upon the international boundary line between the British possessions and the United States of America, into Lake Superior ; but if a true meridional line drawn northerly from the said international boundary at the said most north-westerly angle of the Lake of the Woods is found to pass to the west of where the English River empties into the Winnipeg River, then and in such case the boundary line of the territory claimed by Ontario continues down the middle of the said English River to where the same empties into the Winnipeg River, and continues thence on a line drawn due west from the confluence of the said English River with the said Winnipeg River until the same intersects the meridian above described ; and thence due south, following the said meridional line to the said international monument ; thence southerly and easterly, following upon the international boundary line between the British possessions and the United States of America, into

Lake Superior; and thence, in either case, through Lake Superior, along the international boundary line, to the said line drawn due north from the confluence of the said Rivers Mississippi and Ohio; and thence along the said due north line to the place of beginning.

AN ACT RESPECTING THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE TERRITORY IN DISPUTE BETWEEN THE GOVERNMENTS OF THE PROVINCE OF ONTARIO AND OF THE DOMINION OF CANADA.*

Whereas certain territory on the western and northern boundary of Ontario is claimed by the Government of Ontario as being within the said Provinec, and whereas such claim is disputed; and whereas the Parliament of Canada is desirous of making suitable provision for the administration of criminal justice within the said territory until the dispute is determined;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Every crime or offence committed in any part of the said territory may be inquired of, tried and punished within any county or district in the Province of Ontario or the Province of Manitoba, or in the District of Keewatin, and such crime or offence shall be within the jurisdiction of any court, judge, magistrate or magistrates, or justice or justices of the peace, or other functionary having jurisdiction over crimes or offences of the like nature committed within the limits of the county or district in which such crime or offence is prosecuted; and such court, judge, magistrate or magistrates, justice or justices, or other functionacy, shall proceed thereon by way of preliminary investigation, and to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner as if such crime or offence had been committed within the county or district where such trial is had.

2. Such crime or offence shall be sufficiently laid and charged, whether it is laid and charged to have been committed in Ontario or in the District of Keewatin, and any sentence which might have been imposed upon the offender had the offence been committed either in an undisputed part of Ontario or in an undisputed part of Keewatin, may be imposed upon an offender convicted under this Act.

3. The next preceding two sections shall apply to any crime or offence heretofore committed, as well as to every crime or offence hereafter committed, in the said territory.

4. Where any person charged with the commission of any crime or offence within the territory above described is in custody in any gaol within the Province of Ontario, or within the Province of Manitoba, charged with the said crime or offence, and it is intended that such person shall be tried in a province other than the province in a gaol of which he is confined, or in a different part of the same province, then any judge of any Superior Court of the province in a gaol of which such prisoner is confined, having criminal jurisdiction, or any such court, on application by or on behalf of the Minister of Justice of Canada, or of the Attorney-General of Ontario, or in case the prisoner is in custody at Prince Arthur's Landing and it is intended to try him at Sault Ste. Marie, then the judge of the District of Algoma, on application as aforesaid, may make an order upon the keeper of such gaol to deliver the said prisoner to the person named in such order to receive him; and such person shall, at the time prescribed in such order, convey such prisoner to the place at which he is to be tried there to remain in custody, subject to the order of the court by which it is intended he shall be tried, or of any other court which may have jurisdiction to try him. In case the prisoner is confined in any gaol or lock-up in the said disputed territory, any judge of a Superior Court of Ontario or Manitoba having criminal jurisdiction may make the like order.

The judge or court, on granting the said order may, if the judge or court thinks fit, direct that unless the prisoner is tried within a time limited in the said order, he shall be

---

* Stats. Can., 43 Vic., cap. 36. Assented to 7th May, 1880.

either discharged from custody on his own recognizance or on bail, or returned forthwith to the gaol from which he was taken, as the said judge or court may consider proper, and the terms of the said order shall be duly obeyed; provided that the judge, or any other judge of the same court, or the court, may, at any time, upon application made in that behalf, vary the terms of the said order.

6. The provisions of this Act are merely cumulative to the law as it now stands.

7. Whenever, under any law of Canada, any judge, stipendiary magistrate, justice of the peace or other functionary is authorized to commit to a common gaol, house of correction or lock-up house, or to the custody of the North-West Mounted Police, any person convicted before him of an offence committed in any part of the North-West Territories, or of the District of Keewatin, or in any part of the said disputed territory, then if there be no proper place of confinement for or within the locality in which the conviction is had or the offence was committed, or if for any reason it would, in his opinion, be more convenient or less expensive so to do, the said judge, stipendiary magistrate, justice of the peace or other functionary may commit such person to the gaol at Winnipeg, or to the gaol at Prince Arthur's Landing, whichever may, in his opinion, be nearest to or most conveniently accessible from the place of conviction.

8. Whenever any person is committed to gaol under the preceding section, any constable or other person, in whose charge such person is to be conveyed to the place of imprisonment, shall have the same power to hold and convey such person and to re-take him in case of an escape, and otherwise deal with such person as if he had been committed to such gaol by some court or authority competent (independently of the said section) to so commit him.

9. It shall not be necessary in any warrant of commitment under this Act, or in any conviction or sentence upon which such warrant is issued, that any reason should be stated which renders it more convenient or less expensive, or that it should be stated that, in the opinion of the convicting judge, stipendiary magistrate, justice of the peace or other functionary, it is more convenient or less expensive that the offender should be committed to the gaol mentioned in the warrant, or that such gaol is in his opinion nearer to or more conveniently accessible from the place of conviction.

10. The Governor in Council may, from time to time, make arrangements with the Governments of Ontario and Manitoba, respectively, for the payment of such sums as may be agreed upon for the confinement in the said gaols at Prince Arthur's Landing and Winnipeg, respectively, of such persons as may have been committed to either of such gaols for offences not committed within the Province in which such gaol is situate.

11. This Act shall remain in force until the end of the next Session of Parliament and no longer.

PETITION FOR THE ESTABLISHMENT OF A DIVISION COURT AT RAT PORTAGE.*

To His Honour the Lieutenant-Governor of the Province of Ontario, in Council assembled:

The petition of the undersigned merchants and business men of Rat Portage, and other places on the line of the Canada Pacific Railway, humbly showeth:

That, owing to the fact of there being no Court of Civil Jurisdiction as yet established here, we are put to great inconvenience and loss for want of the necessary facilities to enforce payment of our outstanding debts. The loss and inconvenience complained of will be very much increased as portions of the works on the railway are finished and the sub-contractors, traders, and labourers begin to move from place to place, and many of them leave the works and the district carrying their effects with them. At present we have no power to detain their goods and enforce payment of our lawful claims.

A great number of business transactions take place here, and a large majority of them come within the jurisdiction of the Division Court. We therefore most earnestly

* Sess. Papers, Ont., 1882, No. 23.

impress upon you the urgent necessity of establishing a Division Court here at as early a date as possible.

And your petitioners as in duty bound will ever pray.

Thomas Hanson, M.D.,	John Oman,
E. M. Rideout,	M. McKenzie,
Richard M. Park,	Alex. Matheson,
Owen Carson,	W. Laurens,
W. S. Willson,	A. Laurens,
Geo. D. Northgraves,	William Donorrs,
William McKinnon & Bro.,	William R. Smith,
Baker & Co.,	Jacob Hose,
D. L. Mather,	James Gillis,
N. Boyd,	Walter Oliver,
J. B. Campbell,	Frank Gardner,
P. Doyle,	Jno. A. Lock,
D. J. McDougall,	Otis B. Davidson,
James Fitzgerald,	Wm. Goimy.

Order in Council, approved by the Lieutenant-Governor, the 28th day of May, 1880.*

Upon the recommendation of the Honourable Mr. Crooks, Acting Attorney General, the Committee of Council advise that all that part of the Territorial District of Thunder Bay west of the meridian of the most easterly point of Hunter's Island (formerly known as the provisional boundary line) be divided into two Division Court divisions; that the first of such divisions be composed of the territory lying to the north of the south-easterly shore of the Lake of the Woods and a line drawn in a north-easterly direction from Rapid Portage to the north end of Lake Manitou; thence in an easterly direction to the south end of the lake known as the Lake where the River Bends; thence in an easterly direction to a point where the said meridian of the most easterly point of Hunter's Island intersects the Canadian Pacific Railway, at the south-west angle of Hawk Lake; and that a Division Court be held therefor, to be styled the Third Division Court of the District of Thunder Bay.

That the other of the said divisions be composed of all the territory lying south and east of the Lake of the Woods and of the said line; and that a Division Court be held therefor, to be styled the Fourth Division Court of the District of Thunder Bay.

J. G. Scott,
Clerk Executive Council, Ontario.

Imperial Order in Council, dated 31st July, 1880.†

At the Court at Osborne House, Isle of Wight,
the 31st day of July, 1880.

Present:

The Queen's Most Excellent Majesty,
Lord President,
Lord Steward,
Lord Chamberlain.

Whereas it is expedient that all British territories and possessions in North America, and the islands adjacent to such territories and possessions, which are not

---

* Sess. Papers, Ont., 1882, No. 23.

† Prefix to Dom. Stats., 1880-1, p. ix.

already included in the Dominion of Canada, should (with the exception of the colony of Newfoundland and its dependencies) be annexed to and form part of the said Dominion;

And whereas the Senate and Commons of Canada in Parliament assembled, have in and by an address, dated the 3rd day of May, 1878, represented to Her Majesty "That it is desirable that the Parliament of Canada, on the transfer of the beforementioned territories being completed, should have authority to legislate for their future welfare and good government, and the power to make all needful rules and regulations respecting them, the same as in the case of the other territories (of the Dominion); and that the Parliament of Canada expressed its willingness to assume the duties and obligations consequent thereon;"

And whereas Her Majesty is graciously pleased to accede to the desire expressed in and by the said address.

Now, therefore, it is hereby ordered and declared by Her Majesty, by and with the advice of her most Honourable Privy Council, as follows:—

From and after the first day of September, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the colony of Newfoundland and its dependencies) become, and be annexed to, and form part of the said Dominion of Canada, and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto.

C. L. Peel.

Extract from the Speech of His Honour the Lieutenant-Governor of Ontario, on the Opening of the Legislature, 13th January, 1881.*

It is much to be regretted that the Dominion Government have taken no step to obtain, and have hitherto shown no intention of seeking to obtain, from the Parliament of Canada, legislation confirming the award determining the northerly and westerly boundaries of Ontario, made two years ago by three most distinguished arbitrators chosen by the two Governments, and who had before them all the evidence obtainable from the most diligent researches both in America and Europe, or brought to light during the many discussions bearing on the subject that have taken place during the past century. The result of the inaction of the Dominion Government in this respect is to defer the settlement and organization of a large extent of country; to deprive the inhabitants of that district of those safeguards of peace and order which they, in common with all others, are entitled to enjoy; and to withhold from the people of Ontario the benefits which the possession of that territory would afford.

The Attorney-General of Ontario to the Minister of Justice, with respect to Interim Legislation.†

Toronto,
1st February, 1881.

Dear Sir,—I hope that the present session of the Dominion Parliament will not be allowed to come to an end without the necessary Act being passed adopting and confirming the Boundary Award. If, however, we are again to be disappointed, some additional legislation is absolutely required to mitigate the serious evils consequent upon the unhappy position in which the territory in question is placed. No magistrate or justice of the peace acting in the disputed territory can feel any assurance that his jurisdiction will not be disputed, and his officers set at defiance or sued in trespass; and the doubts

* Journals, Leg. Ass., 1881, Vol. 14, p. 2.

† Sess. Papers, Ont., 1882, No. 23.

which the inhabitants must have as to their position, in view of the delay of the Dominion Parliament to confirm the award, necessarily paralyzes the administration of justice in this territory.

Your Act of last session (43 Vict. cap. 36) does not declare what law will govern in the case of civil rights, and makes no provision for the trial of civil matters; nor does it set at rest the very important question as to whether the license law of Ontario or the prohibitory law of Keewatin governs in this territory. In my letter of 23rd April last, I suggested that Parliament should be requested to make some provision in respect of these matters; and I also suggested that authority should be given alike to the justices of the peace of Keewatin and Thunder Bay and Algoma to act in any part of the disputed territory; and that the jurisdiction of the District Court of the District of Algoma, and of the Division Courts established for Thunder Bay, and the judges and officers of such courts, including the Sheriff of Thunder Bay, should have authority and jurisdiction within this territory. The draft Bill which I submitted last session, under the hope that you would introduce it into Parliament, dealt with these matters; the sections relating to them were not in the Bill which you introduced; they seem to me far more important for the due administration of justice than those which the Bill did include; and indeed the latter, to be operative to any great extent, required the aid of some of the omitted provisions. I do not see what valid objection can be urged against the introduction of these provisions. The fact of reciprocal rights being given to the officers of Keewatin and of Ontario would clearly show that you were not by this legislation admitting the right of Ontario.

On account of the omission of the provision giving to the Sheriff of Thunder Bay authority in this territory, it was found necessary, at very heavy expense, to bring the prisoner Horn, who was accused of murder, down to Sault Ste. Marie for trial.

I send you a copy of the clauses in the draft Bill to which I refer above. You are doubtless bearing in mind that the Act of last session expires by limitation upon the rising of Parliament.

I also send herewith for your consideration a new draft Bill* embodying the omitted provisions, and containing some further words which, to prevent possible misapprehension on the part of anybody, you may perhaps think it useful to employ.

I trust also that authority will be given to the Ontario Government to deal with the land and timber in the disputed territory, subject to our accounting therefor in case our right to the territory should not be maintained. Though the Parliament of Canada has not yet recognized the award, the award certainly gives to us meantime such a *prima facie* interest as makes it most reasonable that we should have the necessary means of giving titles to the settlers within the territory, so long as what you deem the possible rights of the Dominion are duly protected in the manner proposed.

I remain, etc.,

O. Mowat.

The Honourable James McDonald,
Minister of Justice, Ottawa.

Draft Bill enclosed in the foregoing Letter of the Attorney-General of Ontario to the Minister of Justice, 1st February, 1881.

DRAFT BILL.

[This proposed Bill was not passed by the Parliament of Canada.—G. E. L.]

An Act to make further provision respecting the Administration of Justice in the Territory in dispute between the Governments of Canada and of Ontario.

Whereas it is expedient to make further provision for the due administration of justice within the territory in dispute between the Dominion of Canada and the Province of Ontario until the dispute is determined;

* [Being the next succeeding document.—G. E. L.]

Therefore Her Majesty, by and with the advice of the Senate and the House of Commons of Canada, enacts as follows :—

1. Nothing in this Act shall be construed as admitting, by implication or otherwise, the right of the Province of Ontario to the territory so in dispute, or any part thereof. And this Act may be repealed or amended by any Act passed during the present or any future session of the Parliament of Canada.

2. The eleventh section of the Act passed in the forty-third year of Her Majesty's reign, chaptered thirty-six, and intituled "An Act respecting the Administration of Criminal Justice in the Territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada," is hereby repealed.

3. Pending the said dispute, and until the same is decided, and a proclamation is issued by his Excellency the Governor-General declaring such dispute to be at an end, and this Act no longer in force, or until this Act is repealed, the District Court of the District of Algoma, and the Division Courts heretofore established or which may be hereafter established for the District of Thunder Bay, and the judges and officers of such courts, and the Sheriff of the District of Thunder Bay, shall have authority and jurisdiction within and over the said territory in the same manner and to the same extent as such courts, judges, sheriff and officers would have authority and jurisdiction within and over such territory if the right of Ontario thereto was undoubted and undisputed ; and the process of the said courts may be executed therein.

4. Pending the said dispute as aforesaid, or until this Act is repealed, causes of action arising within the said territory, but not within the jurisdiction of the said District or Division Courts, may be prosecuted and tried in any Superior Court of the Province of Ontario, and in any county or district in the said Province, and the process of the said courts may be executed within the said territory.

5. Pending the said dispute as aforesaid, or until this Act is repealed, the laws of the Province of Ontario in force in the said District of Thunder Bay shall govern in all matters of controversy in the courts mentioned in the next preceding two sections.

6. Pending the said dispute as aforesaid, or until this Act is repealed, the seventy-fourth section, headed "Prohibition of Intoxicants," of the Act passed in the thirty-eighth year of Her Majesty's reign, entitled "An Act to amend and consolidate the laws respecting the North-West Territories," shall, with the substitution of "the Lieutenant-Governor of Ontario" for "the Lieutenant-Governor of the said territories," where such words occur in the said section, apply to and be in force in all that portion of the said territory lying west of

A line drawn due north and south through the most easterly point of Hunter's Island, being the line formerly known as the Provisional Westerly Boundary Line of Ontario,

OR,

A line drawn due north from the confluence of the Rivers Mississippi and Ohio,

OR,

Such other line as it may be thought proper to adopt.

If the line adopted does not prohibit the sale of intoxicants throughout all the disputed territory, then provision should be made for the issue of licenses to sell liquors, as in next section. If the prohibition is extended to the entire disputed territory, this section will, of course, be omitted.

7. Pending the said dispute as aforesaid, or until this Act is repealed, the provisions of the Revised Statutes of Ontario, entitled "An Act respecting the sale of Fermented or Spirituous Liquors," shall, so far as the same are in force in the District of Thunder Bay, be in force in that part of the territory hereinbefore described, lying west of

[*Insert here the line adopted above.*]

as if such provisions were re-enacted herein with respect to such territory ; and the License Commissioners appointed by the Lieutenant-Governor of Ontario for the District of Thunder Bay, or for any part thereof, shall have authority to issue licenses having force in the said last described territory.

8. Pending the said dispute as aforesaid, or until this Act is repealed, every stipendiary magistrate or justice of the peace having authority within the District of Keewatin shall have the like authority within the said territory for the enforcement of laws in force therein, as he possesses within the said District of Keewatin for the enforcement of laws in force in the said district; and every stipendiary magistrate and justice of the peace heretofore or hereafter appointed by the Lieutenant-Governor of Ontario, having authority within the District of Thunder Bay, shall have the like authority within the said territory for the enforcement of laws in force therein, as he possesses within the said District of Thunder Bay for the enforcement of laws in force in the said district.

THE MINISTER OF JUSTICE TO THE ATTORNEY-GENERAL OF ONTARIO.*

OTTAWA,
7th February, 1881.

The Honourable O. MOWAT,
Attorney-General, Toronto.

DEAR SIR,—I am in receipt of your letter of 5th instant, enclosing copy of a Bill to make further provision respecting the administration of justice in the territory in dispute between the Governments of Canada and of Ontario, which shall receive my best consideration.

Yours truly,
JAS. MCDONALD.

RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF ONTARIO, PASSED ON THE 3RD MARCH, 1881.†

Resolved,—That this House deeply regrets that notwithstanding the unanimous award made on the 3rd August, 1878, by the Arbitrators appointed by the joint and concurrent action of the Government of Canada and the Government of Ontario to determine the northerly and westerly boundaries of this Province, no legislation has been submitted by the Government of Canada to the Dominion Parliament for the purpose of confirming that award, nor has the validity of the award yet been recognized by the Government of Canada.

Resolved,—That the omission of the Government and Parliament of Canada to confirm the award is attended with grave inconvenience, has the effect of retarding settlement and municipal organization, embarrasses the administration of the laws, and interferes with the preservation of the peace, the maintenance of order, and the establishment of good government in the northerly and north-westerly parts of the Province of Ontario.

Resolved,—That it is the duty of the Government of Ontario to assert and maintain the just claims and rights of the Province of Ontario as determined by the award of the Arbitrators; and this House hereby re-affirms its determination to give its cordial support to the Government of Ontario in any steps it may be necessary to take to sustain the award, and to assert and maintain the just claims and rights of the Province as thereby declared and determined.

The resolutions were carried on the following division :—

YEAS—Messieurs Appleby, Awrey, Baker, Badgerow, Ballantyne, Baxter, Bell, Bishop, Blezard, Bonfield, Boulter, Broder, Caldwell, Calvin, Cascaden, Chisholm, Cook, Creighton, Crooks, Deroche, Dryden, Ferris, Field, Fraser, Freeman, French, Gibson (Huron), Gibson (Hamilton), Graham, Hardy, Hawley, Hay, Hunter, Jelly, Kerr, Laidlaw, Lauder, Lees, Livingston, Long, Lyon, McCraney, McKim, McLaughlin, McMahon,

---

* Sess. Papers, Ont., 1882, No. 23.

† Journals Leg. Ass., 1881, Vol. 14, p. 151.

Meredith, Merrick, Metcalfe, Monk, Morgan, Morris, Mowat, Nairn, Near, Neelon, Pardee, Parkhill, Paxton, Peck, Robinson (Cardwell), Robinson (Kent), Robertson, (Halton), Rosevear, Sinclair, Springer, Striker, Tooley, Waters, Watterworth, Wells, White, Widdifield, Wigle, Wood, Young—75.

Nay—Mr. Baskerville—1.

Act of the Legislature of Manitoba to Provide for the Extension of the Boundaries of that Province.*

(Extract.)

Whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it is enacted that "the Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to the Province affected thereby;"

And whereas it is expedient and desireable that the boundaries of the Province of Manitoba should be increased on terms and conditions of a just character;

Therefore the Legislative Assembly of Manitoba enacts as follows:

1. The Legislative Assembly of Manitoba consents that the Parliament of Canada may increase or otherwise alter the limits of the Province of Manitoba upon the terms and conditions set out in this Act, and may make provisions respecting the effect and operation of any such increase or alteration of territory; the increase or alteration of the limits of the Province to be so that the boundaries thereof shall be as follows: commencing at the the intersection of the International boundary dividing Canada from the United States of America, by the centre line of the road allowance between the twenty-ninth and thirtieth ranges of townships lying west of the first principal meridian in the system of Dominion land surveys; thence northerly following upon the said centre line of the said road allowance, as the same is or may hereafter be located, defining the said range line on the ground across townships one to forty-six,† both inclusive, to the intersection of the said centre line of the said road allowance by the centre line of the road allowance on the twelfth base line in the said system of Dominion land surveys; thence easterly along the said centre line of the road allowance on the twelfth base line, following the same to its intersection by the easterly limit of the District of Keewatin, as defined by the Act 39 Victoria, chaper 21, that is to say, to a point where the said centre line of the road allowance on the twelfth base line would be intersected by a line drawn due north from where the westerly boundary of the Province of Ontario intersects the aforesaid international boundary line dividing Canada from the United States of America; thence due south, following upon the said line to the international boundary aforesaid, and thence westerly, following upon the said International boundary line dividing Canada from the United States of America, to the place of beginning."

The Lieutenant-Governor to the Secretary of State.‡

Toronto, March 4th, 1881.

Sir,—I have the honour herewith to transmit a copy of the Resolutions adopted yesterday by the Legislature of this Province with regard to the delay, on the part of

---

*Man. Stat., 44 Vic., Cap. 1. Assented to 4th March, 1881.

†[In the Dominion Act, 44 Vic., cap. 14, providing for the extension of the boundaries of Manitoba, this line is described as being drawn "across townships one to forty-four." See the Act, *post*, p. 412.—G.E.L.]

‡Sess. Papers, Ont., 1882, No. 24.

the Government of Canada, in giving effect to the Award of the Arbitrators appointed to determine the northerly and westerly boundaries of Ontario. For the Resolutions seventy-five members voted Yea, while but one voted Nay. In view of the interests concerned, and of the unanimity of the Legislature now for the second time recorded, my Government express the hope that the present Session of the Dominion Parliament will not be permitted to close without the legislation confirming the said Award.

I have the honour to be, Sir,

Your obedient servant,

JOHN BEVERLEY ROBINSON,
Lieutenant-Governor of Ontario.

The Honourable the Secretary of State,
Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 7th March, 1881.

SIR,—I am directed to acknowledge the receipt of your despatch of the 4th inst. enclosing a copy of the Resolution adopted on the 3rd inst. by the Legislature of the Province of Ontario, with regard to the delay in giving effect to the Award of the Arbitrators appointed to determine the northerly and westerly boundaries of Ontario, and expressing the hope of your Government that the said Award may be confirmed during the present Session of the Dominion Parliament.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

THE LIEUTENANT-GOVERNOR TO THE SECRETARY OF STATE, WITH RESPECT TO THE BILL FOR EXTENDING THE BOUNDARIES OF MANITOBA.†

TORONTO, 15th March, 1881.

SIR,—My Government have had their attention called to a Bill introduced into the Dominion Parliament by the Government of Canada, providing for the extension of the boundaries of the Province of Manitoba. The terms of this Bill, so far as regards the proposed easterly limit of that Province, my Government regard with the greatest concern, and consider as in the highest degree objectionable. So far as the territory to be comprised within the limits of the Province of Manitoba is clearly and indisputably within the jurisdiction of the Parliament of Canada, my Government rejoice at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and the North-West Territories the direct benefits of Provincial and Municipal government.

But while the extension of the boundaries in directions as to which there is no dispute is a matter of congratulation, the terms in which the new eastern boundary of the Province is described in the Bill appear to my Government to call for an earnest and vigorous protest on behalf of the Province of Ontario.

---

* Sess. Papers, Ont., 1882, No. 24.

† Sess. Papers, Ont., 1882, No. 23.

According to the provisions of the Bill, the eastern boundary of Manitoba is to be the western boundary of the Province of Ontario, wherever that boundary may hereafter be determined to be, though a very large part of our territory in that direction is still in dispute on the part of the Government at Ottawa, notwithstanding that more than two years ago it was found and declared to be ours by the unanimous award of three distinguished gentlemen mutually chosen to determine the question.

My Government desire to call the attention of the Government of the Dominion once more—(1) to the great and obvious injury occasioned to the interests of Ontario by the refusal or delay of the Dominion Government to recognize and confirm that award; (2) to the inconvenience and embarrassment, in an administrative sense, incidental to the delay; and (3) to the facts that, whilst the Government of the Dominion have failed to procure or propose the legislation necessary to the confirmation of the award, and treated the rights of Ontario to the boundaries determined by the Arbitrators as being still open to question, they have not been pleased up to this moment to enter into any discussion of the subject with this Government, or even to make any official communication of the grounds on which a recognition of the award, by which the matter in question was intended and supposed to be settled, has been declined or delayed; and that the only answer which has been hitherto given to the repeated representations made on this subject has been that the communications would receive consideration.

Under these circumstances, my Government can only regard this new step, of intruding a third party into the existing controversy, as an act of direct antagonism and hostility to the interests and rights of the Province of Ontario.

Hitherto the assent of the Dominion of Canada to a settlement of the question has been necessary for that purpose, and would be sufficient. The Dominion has no constitutional interest in withholding that assent, and the people of Ontario have a voice in its councils. But, by the measure which has received its first reading in the House of Commons, it is proposed to give to another Province a new, direct, and strong interest adverse to that of the Province of Ontario, and to invite Manitoba, as a contiguous Province, with a growing and active population, to claim jurisdiction over every portion of the territory to which the Dominion of Canada has thought fit to question the right of Ontario.

The proposed measure would also make the consent of the Province of Manitoba as well as the Government at Ottawa to be hereafter essential to any settlement, or even to any step towards a settlement, of the existing controversy; and would place that Province in such a position with reference to the territory as may make almost, if not quite, impossible an amicable settlement of the question, or any settlement founded on the ground of the just obligation that an award made in good faith imposes on Nations, Dominions, or Provinces which, through their representatives, were parties to the arbitration.

Serious and most vexatious difficulties cannot fail to arise from the conflicting interpretation of their rights in the premises by any of the three authorities claiming jurisdiction within an extended area of territory, where it is of the utmost importance to peace and good order that the power of the law should be paramount and beyond question. In this view, it has been repeatedly, and hitherto vainly, urged that if our right to the territory is not acknowledged, a provisional arrangement should be made, with the sanction of Parliament, in regard to the law which is to regulate the rights and obligations of the inhabitants with respect to civil rights and property, and kindred matters, until the question in dispute should be settled.

In short, my Government look upon the proposed measure as calculated to aggravate all existing difficulties, and to prove most prejudicial to the harmony and accord which should prevail between the Provinces of the Dominion.

Under all the circumstances, my Government desire respectfully to urge that, in fair dealing with the Province which they represent, the measure in progress should define the easterly boundary of the Province of Manitoba, so as not for the present to extend in an easterly direction beyond the boundary of Ontario as determined by the Arbitrators; leaving the further extension of Manitoba eastward to be provided for by

future legislation, should any competent authority decide that Ontario is entitled to less territory than by the award is declared to belong to this Province.

The resolutions of the Legislative Assembly, passed in the session of 1880, and the resolutions passed in the session which has just terminated, and which received the unanimous support, with an individual exception, of the whole House, were sufficient to show that if the measure should be passed in its present form it would be deemed by almost the whole people of Ontario as a violation of the rights of the Province, and as an act of gross injustice towards it.

The Ontario Government trust that, in view of the representations made, the Government of Canada may even yet see fit so to modify the measure before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages to the Province of Manitoba, in whose rapid progress and development this Province, as a portion of the Dominion, feel profound satisfaction.

I have the honour to be, Sir,

Your obedient servant,

J. B. Robinson.

To the Honourable the Secretary of State,
Ottawa.

The Under-Secretary of State to the Lieutenant-Governor.*

Ottawa, 16th March, 1881.

Sir,—I am directed to acknowledge the receipt of your despatch of the 15th instant, on the subject of the Bill introduced into the Dominion Parliament providing for the extension of the boundaries of the Province of Manitoba.

I have the honour to be, Sir,

Your obedient servant,

Edouard J. Langevin,
Under-Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

Amendments to the Bill to Provide for the Extension of the Boundaries of the Province of Manitoba (44 Vic., cap. 14), moved in the House of Commons, Ottawa, 18th March, 1881.†

Sir John A. Macdonald moved, seconded by Mr. Langevin, and the Question being proposed, That the Bill be now read the third time;

Mr. Mills moved, in amendment, seconded by Sir Richard J. Cartwright, That all the words after "now" to the end of the Question, be left out, and the words "recommitted to a Committee of the Whole House, with instructions that they have power to so amend the same as to provide that pending the final settlement of the western boundary of Ontario, the eastern boundary of Manitoba be not extended eastward of the limit declared by the award of the Arbitrators appointed by the Governments of Canada and Ontario, to be the western limit of the Province of Ontario," inserted instead thereof;

And the Question being put on the amendment, the House divided; and the names being called for, they were taken down, as follows:—

Yeas—Messieurs Bain, Blake, Brown, Cartwright, Casey, Cockburn (Muskoka), Fleming, Gillies, Holton, Macdonell (Lanark), McDougall, Mills, Paterson (Brant), Robertson (Shelburne), Rymal, Scriver, Snowball, Sutherland, Thompson, and Trow—20.

---

* Sess. Papers, Ont., 1882, No. 23.

† Journals Ho. of Coms., 1881, Vol. 15, p. 370. See the next following document.

NAYS—Messieurs Allison, Arkell, Barnard, Beaty, Beauchesne, Bergeron, Bill, Bowell, Bunting, Cameron (Victoria), Carling, Caron, Costigan, Coughlin, Coursol, Cuthbert, Daly, Daoust, Dawson, Desaulniers, Drew, Elliott, Farrow, Ferguson, Fitzsimmons, Fortin, Gault, Gigault, Girouard (Kent), Hackett, Haggart, Hay, Hesson, Hooper, Houde, Hurteau, Jones, Kilvert, Kranz, Lane, Langevin, Lantier, Little, Macdonald (King's), Macdonald (Vic. B.C.), McDonald (Pictou), Macmillan, McCallum, McConville, McCuaig, McInnes, McLennan, McRory, Manson, Massue, Merner, Mongenais, Montplaisir, Mousseau, Muttart, O'Connor, Ogden, Orton, Ouimet, Patterson (Essex), Plumb, Pope (Compton), Pope (Queen's), Poupore, Richey, Ross (Dundas), Rouleau, Royal, Ryan (Marquette), Ryan (Montreal), Schultz, Scott, Shaw, Sproule, Stephenson, Strange, Tellier, Tilley, Vallée, Vanasse, Wallace (Norfolk), Wallace (York), White (Cardwell), White (Hastings), White (Renfrew), Williams, and Wright—92.

So it passed in the negative.

And the Question being again proposed, That the Bill be now read the third time;

Mr. Dawson moved, in amendment, seconded by Mr. Poupore, That all the words after "now" to the end of the Question, be left out, and the words "recommitted to a Committee of the Whole House, with instructions that they have power to amend it, so that the present eastern boundary of the Province of Manitoba, prolonged to the northern limit of the said Province, shall be the boundary line of the said Province on the east," inserted instead thereof;

And the Question being put on the amendment, the House divided; and it passed in the negative.

And the Question being again proposed, That the Bill be now read the third time;

Mr. Blake moved, in amendment, seconded by Sir Richard J. Cartwright, That all the words after "now" to the end of the Question, be left out, and the words "recommitted to a Committee of the Whole House, with instructions that they have power to amend the same so as to provide some definite eastern limit beyond which Manitoba shall not be deemed to extend, pending the settlement of the western boundary of Ontario," inserted instead thereof;

Mr. McDougall moved, in amendment to the said proposed amendment, seconded by Mr. McDonald (Cape Breton), That the words "some definite eastern limit" be left out, and the words "that the conventional boundary agreed upon between the Governments of the Dominion and Ontario, shall be the limit," inserted instead thereof;

And the Question being put on the amendment to the said proposed amendment, the House divided; and it passed in the negative.

And the Question being put on the amendment to the original question, the House divided; and the names being called for, they were taken down, as follows:—

YEAS—Messieurs Blake, Cartwright, Casey, Casgrain, Gillies, Holton, Macdonell (Lanark), McDougall, Mills, Paterson (Brant), Robertson (Shelburne), Scriver, Skinner, Snowball, Sutherland, Trow, and Wheler—17.

NAYS—Messieurs Allison, Bannerman, Barnard, Beaty, Beauchesne, Bergeron, Bill, Boultbee, Bowell, Bunting, Cameron (Victoria), Carling, Caron, Costigan, Coursol, Daly, Daoust, Desaulniers, Doull, Drew, Elliott, Ferguson, Fortin, Gault, Gigault, Girouard (Kent), Hackett, Haggart, Houde, Hurteau, Jones, Kilvert, Kranz, Langevin, Lantier, Little, Macdonald (Vic. B.C.), McDonald (C. Breton), McDonald (Pictou), Macmillan, McCallum, McConville, McCuaig, McLennan, Manson, Massue, Merner, Méthot, Montplaisir, Mousseau, Muttart, O'Connor, Ogden, Orton, Ouimet, Patterson (Essex), Pinsonneault, Plumb, Pope (Compton), Pope (Queen's), Poupore, Richey, Rochester, Ross (Dundas), Routhier, Royal, Ryan (Marquette), Ryan (Montreal), Schultz, Scott, Shaw, Stephenson, Strange, Tassé, Tellier, Tilley, Vallée, Vanasse, Wade, Wallace (Norfolk), Wallace (York), White (Cardwell), White (Renfrew), and Williams—84.

So it passed in the negative.

And the Question being again proposed, That the Bill be now read the third time;

Mr. Blake moved, in amendment, seconded by Sir Richard J. Cartwright, That all the words after "now," to the end of the Question, be left out, and the words "recommitted to a Committee of the Whole House, with instructions that they have power to amend the same so as to provide that the existing conditions under the conventional boundary

agreed on by the Governments of Canada and Ontario, in 1874, shall not, pending the settlement of the true boundary, be affected prejudicially to the interests of either of the contracting parties, or to those of the inhabitants of Prince Arthur's Landing, Thunder Bay, and other parts of the territory which have been long under the control of and treated as part of Ontario, and are represented in this House as part of that Province," inserted instead thereof;

And the Question being put on the amendment, the House divided as in the last preceding division.

So it passed in the negative.

Then the Main Question being put, the House divided; and it was resolved in the affirmative.

The Bill was accordingly read the third time.

An Act to Provide for the Extension of the Boundaries of the Province of Manitoba.*

Whereas, by an Act of the Legislature of the Province of Manitoba, passed during the session thereof held in the present year of Her Majesty's reign, and intituled "An Act to Provide for the Extension of the Boundaries of the Province of Manitoba," the Legislature of that Province hath consented to the increase of the same by the alteration of its limits, as hereinafter enacted, upon the terms and conditions hereinafter expressed: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Province of Manitoba shall be increased as hereinafter defined, that is to say, so that the boundaries thereof shall be as follows:—"Commencing at the intersection of the international boundary dividing Canada from the United States of America by the centre of the road allowance between the twenty-ninth and thirtieth ranges of townships lying west of the first principal meridian in the system of Dominion land surveys; thence northerly, following upon the said centre of the said road allowance as the same is or may hereafter be located, defining the said range line on the ground across townships one to forty-four,† both inclusive, to the intersection of the said centre of the said road allowance by the centre of the road allowance on the twelfth base line in the said system of Dominion land surveys; thence easterly along the said centre of the road allowance on the twelfth base line, following the same to its intersection by the easterly limit of the District of Keewatin, as defined by the Act thirty-ninth Victoria, chapter twenty-one, that is to say, to a point where the said centre of the road allowance on the twelfth base line would be intersected by a line drawn due north from where the westerly boundary of the Province of Ontario intersects the aforesaid international boundary line dividing Canada from the United States of America; thence due south, following upon the said line to the international boundary aforesaid; and thence westerly, following upon the said international boundary line dividing Canada from the United States of America, to the place of beginning," and all the land embraced by the said description not now within the Province of Manitoba shall, from and after the passing of this Act, be added thereto, and the whole shall, from and after the said date, form and be the Province of Manitoba.

2. The terms and conditions upon which such increase is made are as follows:

(*a*) All the enactments and provisions of all the Acts of the Parliament of Canada which have, since the creation of the Province of Manitoba, been extended into and made to apply to the said Province, shall extend and apply to the territory by this Act added thereto, as fully and effectually as if the same had originally formed part of the Province

---

* Stats. Can., 44 Vic,, Cap. 14. Assented to 21st March, 1881.

†[In the Manitoba Act above recited, the line is described as being drawn "across townships one to forty-six." See the Act, *ante*, p. 407.—G. E. L.]

and the boundaries thereof had, in the first instance, been fixed and defined as is done by this Act—subject, however, to the provisions of section three of this Act.

(*b*) The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

3. All laws and ordinances in force in the territory hereby added to the Province of Manitoba at the time of the coming into force of this Act, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative and ministerial, existing therein at the time of the coming into force of this Act, shall continue therein as if such territory had not been added to the said Province; subject, nevertheless, with respect to matters within the legislative authority of the Legislature of the Province of Manitoba, to be repealed, abolished or altered by the said Legislature.

4. This Act shall come into force only upon, from and after a day to be appointed in that behalf by proclamation of the Governor published in the *Canada Gazette*.

AN ACT TO CONTINUE IN FORCE FOR A LIMITED TIME THE ACT FORTY-THIRD VICTORIA, CHAPTER THIRTY-SIX.*

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Act passed in the forty-third year of Her Majesty's reign, chapter thirty-six, and intituled "An Act respecting the Administration of Criminal Justice in the Territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada," shall continue in force until the end of the now next ensuing session of Parliament.

THE UNDER-SECRETARY OF STATE TO THE PETITIONERS OF RAT PORTAGE.†

OTTAWA, 1st April, 1881.

SIR,—With reference to the petition, signed by you and others of the merchants and business men of Rat Portage, praying that a court of civil jurisdiction may be established at that place, I desire to acquaint you, for the information of the petitioners, that as Rat Portage will shortly be included within the Province of Manitoba, when the Act extending the boundaries of that Province is brought into force (unless it be already within the limits of Ontario), and as the administration of justice and the establishment of Provincial Courts devolves upon the Provincial authorities, it would not be proper for this Government to take action upon their petition.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD J. LANGEVIN,
Under-Secretary of State.

---

* Stats. Can., 44 Vic., Cap. 15. Assented to 21st March, 1881. [An Act to continue in force the Act in question for a still further period was passed in the session of the Dominion Parliament of 1882, but was not received in time to be inserted in this work.—G. E. L.]

† Sess. Papers, Ont., 1882, No. 23.

MR. LYON, STIPENDIARY MAGISTRATE, TO THE DEPUTY ATTORNEY-GENERAL.*

RAT PORTAGE,
April 30th, 1881.

J. G. SCOTT, ESQ.,
Deputy Attorney-General.

SIR,—Enclosed you will find the copy of a letter from the Dominion Government in answer to a petition sent by the people of Rat Portage, praying for a Civil Court to be established.

I have the honour to be, Sir,

Your obedient servant,

W. D. LYON, *S.M.*

LECTURE OF SIR FRANCIS HINCKS (ONE OF THE ARBITRATORS) ON THE NORTHERLY AND WESTERLY BOUNDARIES OF ONTARIO, AND THE AWARD RELATING THERETO.†

Sir Francis Hincks having been introduced to the meeting by the Chairman, the Hon. Sir W. P. Howland, K.C.M.G., C.B., delivered the following lecture :—

SIR WM. HOWLAND, LADIES AND GENTLEMEN,—

Before entering on the subject to which I propose to invite your attention this evening, I must express to you the deep gratification which I felt on being invited, during a recent visit, to address a Toronto audience after the lapse of so many years. Should my life be spared for another twelve months, a period of fifty years will have elapsed since, as a young man, I settled in the old capital of Upper Canada, then popularly known as Little York, but within two years afterwards incorporated as the city of Toronto. Ten years after my first settlement at York, I became a member of the Government of United Canada, and was under the necessity of taking up my residence at the capital, since which time, with the exception of about two years, when the sessions of Parliament were held at Toronto, under the alternate system, I have been a comparative stranger among you, although I have had frequent opportunities of seeing several of my old fellow-pioneers, and have had the gratification of being invariably met with a friendly greeting, not only by my old friends, but by those with whom I had had differences of opinion on what may now be properly termed dead issues.

Having several years ago entirely withdrawn from party connection, a political address would be wholly repugnant to my feelings ; but circumstances seem to me to render it desirable that the public should be better informed on a subject which is generally supposed to be imperfectly understood, while it is due as well to my own character, as to the memory of the late lamented Chief Justice Harrison, that a full explanation should be given of the grounds on which the Arbitrators appointed to determine the true boundaries of the Province of Ontario arrived at their decision. Such an explanation is, I think, likewise due to the Right Honourable Sir Edward Thornton, Her Majesty's Minister at Washington, who was good enough, at the joint request of the Governments of the Dominion and of Ontario, to act as third Arbitrator on the occasion referred to. While it is no part of my duty to defend the action of the Dominion and Provincial Governments in agreeing to leave the disputed boundary of the Province of Ontario to be determined by Arbitrators, I may remark that there are many precedents for such a

---

* Sess. Papers, Ont., 1882, No. 23.

† The Northerly and Westerly Boundaries of the Province of Ontario, and the Award relating thereto, as discussed and explained by the Hon. Sir Francis Hincks, K.C.M.G., in his Public Lecture at the Education Department, Toronto, May 6th, 1881. Toronto : Printed by C. Blackett Robinson, 1881.

mode of settling conflicting claims. It is fortunate that there is no danger of this question, complicated though it is at present, leading to the fearful consequences which history, as well as our daily observation, teaches us to be the result of territorial disputes. A very large proportion of the wars which have occurred during past centuries, and which have entailed such immense losses of blood and treasure, must be attributed to quarrels regarding boundaries ; and in modern times the expediency of resorting to arbitration as the best mode of settling such disputes, has been very generally admitted.

CRITICISMS ON THE AWARD.

In the case of the Ontario boundary arbitration in 1878, the unanimous award made after a most careful and conscientious examination of the voluminous papers submitted to the Arbitrators, together with the cases of the learned counsel on both sides, has been severely criticized, not only by the Select Committee of the House of Commons in 1880, but by the leaders of the Dominion Government in the Senate and House of Commons during the last session. It has been stated as an objection to the competency of the Arbitrators, that two of the three were not members of the legal profession, but I have been unable to find any precedent in analagous cases for confining the choice of arbitrators to lawyers. In one of the most recent cases, when arbitrators were appointed to determine the boundaries between Zululand and the Transvaal in South Africa, there was one lawyer, the Attorney-General of the Cape, joined with a civilian, and an officer holding the rank of Lieutenant-Colonel. I own that I fail to discover the value of special legal attainments in such a case ; and, moreover, there were before the Arbitrators conflicting opinions given by eminent judges and lawyers. The greatest judges are far from being infallible, and are themselves always desirous of the assistance of counsel, whose duty is to submit every point of law, and every fact, in support of their respective clients. Let me, for argument's sake, suppose that in a trial before a judge, a clause in an Act of Parliament had a special bearing on the case in controversy, and that the counsel, whose client would be benefited by that clause, were to fail to bring it to the notice of the Court, and that the judgment afforded proof that this important clause had not engaged the judge's attention, surely it would not be contended that, however eminent the judge might be, his judgment ought to carry as much weight as that of a non-professional arbitrator whose opinion had been formed after a full consideration of circumstances, which had never been brought under the notice of the judge. I shall have to make a practical application of this suppositious case to the disputed boundary of Ontario on the south-west, and as bearing on the judgment of Chief Justice Sewell in the De Reinhardt case, which was concurred in by his colleagues. I must, before doing so, notice as briefly as possible some statements, which appear to me to be a sufficient justification of my placing on record the reasons which induced the Arbitrators to make the award which is now the subject of controversy. During the session of Parliament held in 1880, a Select Committee was appointed by the House of Commons to inquire into and report upon all matters connected with the boundaries between the Province of Ontario and the unorganized territories of the Dominion. The report, concurred in by nine out of thirteen members of that Committee, declares that "the award does not declare the true boundaries of Ontario," adding, "it seems to your Committee to be inconsistent with any boundary line ever suggested or proposed subsequent to the Treaty of Utrecht." One of the principal witnesses, Mr. William McD. Dawson, a portion of whose evidence is embodied in the report, stated that the Arbitrators had adopted a boundary "which was not a possible one." Sir John Macdonald is reported in *Hansard* to have said :—"We have only to read the written statement of one of those Arbitrators, Sir Francis Hincks, in which he admitted they did not settle the true boundary, to be convinced." Sir Alexander Campbell was reported to have made substantially the same statement in the Senate. It has seemed to me that such allegations as I have cited, render it desirable that the public should be put in possession of the grounds, on which the Arbitrators concurred in an award, which, although adverse to the claims of the Ontario Government, was promptly accepted by it, and subsequently by the Provincial Legislature.

SOUTH-WESTERN BOUNDARY.

I shall first consider the South-Western Boundary. It is evident from the report of the Select Committee, that its framer attached much greater weight to Commissions to Governors as affecting boundaries, than the Arbitrators did. Commissions may be of assistance in interpreting obscure language in an Act of Parliament, but where the meaning of an Act is free from doubt, it cannot be set aside by a Commission. The south-western boundary of Ontario depends on the construction of the Imperial Act of 1774, on the effect of the subsequent treaty with the United States of 1783, and on the proclamation issued under the Act of 1791. It is important to consider the circumstances under which the Act of 1774 was passed. In the year 1763 a treaty was concluded at Paris, between England and France, which contained the following provision: "In order to establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed that for the future the confines between the dominions of His Britannic Majesty, and those of His Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of that river and the lakes Maurepas and Pontchartrain to the sea . . . . provided that the navigation of the Mississippi shall be equally free as well to the subjects of Great Britain as to those of France in its whole breadth and length from its source to the sea." The treaty from which I have just quoted was concluded on the 10th February, 1763, and on 7th October, 1763, a proclamation was issued erecting four new Governments, one of which was Quebec, the western boundary of which was fixed at the south end of Lake Nipissing. In the year 1774, in consequence of urgent representations, as to the necessity of establishing a settled government in territories where no government of any kind existed, a bill was introduced by the Government of the day, the object of which was clearly stated by Lord North in language which I shall quote. "It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments, or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada, but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is that, if gentlemen will weigh the inconveniences of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate." Now, it must be borne in mind, that the principal posts in the unorganized territories, when the Act of 1774 was passed, were situated on the River Mississippi, and of course in British territory by the Treaty of 1763. The pretension of the advocates of the due north line, which is the boundary claimed by the Dominion, is that Parliament deliberately abandoned the natural boundary of the Mississippi, thereby excluding from the benefit of the Act, the very persons for whom it was specially intended, and that it adopted, without a single conceivable motive, a conventional line running due north from the junction of the Ohio with the Mississippi. It is well known that the Bill was introduced in the House of Lords, in 1774, and that as sent down by that House to the Commons the description was "all the said territories, islands and countries, heretofore a part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands and countries are not within the limits of some other British Colony as allowed and confirmed by the Crown." Now it has never been pretended that there was any ambiguity in that description as to the western boundary, but a discussion was raised in the Commons by Mr. Edmund Burke,

then agent for the State of New York, who had doubts whether under the description Canada might not encroach on territory on the north-east of that State, which had actually been in dispute, and which by amicable agreement had been made over to New York, reserving the rights of Canadian settlers in the disputed territory. The territory on the Mississippi had never been in dispute during the protracted wars between the British and French regarding boundaries in the Ohio valley.

INTENTION OF ACT OF 1774.

There is not the slightest reason to suppose that a single member of the House of Commons desired to alter the natural boundary of the Mississippi, on the banks of which were the principal settlements, for the inhabitants of which the Act was specially intended to provide a government. Mr. Burke, as appears from a report of his remarks in a book entitled "The Cavendish Debates," insisted very strenuously on defining the boundaries more precisely. I am not unaware that the framer of the report of the Commons Committee has, on the authority of Mr. Justice Johnson of Montreal, pronounced the Cavendish Debates as of no authority, but the Hon. Wm. McDougall has given most satisfactory reasons for considering them a valuable contribtion to the history of the period.* There is however a letter in existence, addressed by Mr. Burke to the Legislature of New York, in which he explains with great precision the object of his amendments, and from which it is clear that it never was contemplated to interfere with the Mississippi boundary. The change in the description of the boundary was made while the House was in Committee on the Bill, four members, one of whom was Mr. Burke, having left the House in Committee to arrange the new description. It is said "the difference was whether the tract of country not inhabited should belong to New York or Canada," and most assuredly this difference could not possibly apply to territory on the Mississippi River. I shall now cite the boundaries as finally agreed to by the House, and I request your most particular attention to the first words, which seem to me to deserve much more consideration than has been given to them by the advocates of the due north line, from the confluence of the Ohio and Mississippi Rivers. "That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain, until in the same latitude it meets the River St. Lawrence, from thence up the eastern bank of the said river to the Lake Ontario, thence through the Lake Ontario and the river commonly called the Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the Charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strike the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay." You will not fail to observe that the intention of the framers of the amendment, as of the original Bill, was to include all the territories belonging to the Crown of Great

* [The Report of the Cavendish Debates whose authenticity has been questioned by Mr. Justice Johnson and Mr. S. J. Dawson, was published in 1839, the original MS., which is in the British Museum, having been discovered only in the early part of that year. In 1837, two years before this discovery, another and independent account of the proceedings upon the Quebec Bill of 1774, which was the subject of these Debates, was published in the American Archives; which account is in perfect accord with the Cavendish Report. (American Archives, vol. 1, pub. by authority of Congress.)—G. E. L.]

Britain in the newly constituted Province, which were not already included in the old Provinces. You will notice how precise the definition is until the Ohio is reached, after which there was no territory regarding which there could be a dispute. You will likewise bear in mind that the last clause of the description is precisely the same as in the original Bill, viz., "Westward to the banks of the Mississippi and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay," and that in that Bill "northward" could not have had the meaning which has been claimed for it, and which is that it must necessarily mean "due north," although the meaning of the word is really "towards the north."

THE DE REINHARDT CASE.

Great stress has been laid on a decision given in the year 1818 by the Court of Queen's Bench at Quebec, presided over by Chief Justice Sewell, on the trial of a person named De Reinhardt, for a murder committed at a place called Dalles, in the vicinity of the Lake of the Woods. Some judges who gave evidence before the Select Committee on the boundaries in 1880, referred to this judgment as conclusive in favour of the due north line. Judge Johnson said that "Chief Justice Sewell, who tried the case, is looked upon as the greatest luminary of the law we ever had in Lower Canada. It may almost be said that he made our laws." Again, Mr. Justice Armour said :—"There is a judicial decision as to the meaning of the word 'northward' in the Quebec Act. The decision was that 'northward' evidently meant 'due north.' That is the De Reinhardt case. No doubt about it, it is a clear decision, and were I deciding judicially I would be bound to follow that decision." As Mr. Justice Armour proceeded to state, that if asked his individual opinion as a person looking into the matter, he would determine that "'northward' had reference to the territory and not to a limitary line," I do not think that his evidence is much in favour of the due north line. I shall state the reasons which led me, and I believe my co-Arbitrators to attach no importance whatever to the judgment in the De Reinhardt case. The question of boundary was never fairly brought before the Court in 1818. It is well known that very high authorities, including the eminent counsel by whom De Reinhardt was defended, the Honourable Messrs. Cartier and McDougall, the Honourable David Mills, who has made a most valuable report on the subject, the Messrs. Dawson, up to a recent period, and the learned counsel who represented Ontario before the Arbitrators, have all held that the language employed in the Order of Council and the Proclamation of 1791, "including all the territory to the westward and southward of the said line to the utmost extent of the country called or known by the name of Canada," must be interpreted as giving to Ontario, then Upper Canada, a much more extensive territory to the west, than what it would be entitled to according to the interpretation placed on the Act of 1774 by those who hold that the Mississippi River was the boundary of the old Province of Quebec, and that the Act of 1791 was intended to divide that Province, but not to extend it. I refer to this difference of opinion here to show that the view taken by the Arbitrators was never presented to the Court in 1818. Had it been pointed out to the eminent judges who presided on that occasion, that the language of the Act of 1774 made special provision for including in the new Province "all the territories, islands and countries in North America belonging to the Crown of Great Britain," before defining the boundaries, it might have been presumed that the intention of the Act would have been so manifest, that even if the language had been deemed ambiguous, its meaning could scarcely have been misunderstood. To my own mind there is no ambiguity in the language. The object of the Act was to provide for the government of all the territories not included in the old Provinces, and not south of the Ohio River. When the Mississippi was reached, the word "northward" was quite sufficient, as the western boundary was that established by the Treaty of 1763. How any one could have imagined that Parliament would have been guilty of the absurdity of excluding the settlements on the river from the benefit of an Act chiefly intended for them, and of abandoning a natural boundary like the Mississippi in order to run a line due north, without any conceivable object, is incomprehensible to me. The point which strikes me as important is that De Reinhardt's counsel rested their case on the Act of

1791 and not on that of 1774, and it will be found on reference both to the arguments of counsel, and to the judgment of the Court, that the most important branch of the decision was that the Act of 1791 only authorized the division of the old Province of Quebec into two separate Provinces, and consequently that the Proclamation could not be interpreted to give Upper Canada any territory that had not been included in the old Province of Quebec. Now, the Arbitrators were of opinion that on this point the judgment of the Court delivered at Quebec in 1818 was correct, and consequently that the boundaries of Ontario must be limited to those of the Province of Quebec as defined by the Act of 1774. There have been so many opinions, which I admit to be entitled to great weight, in favour of the boundary which was contended for by the eminent counsel for the prisoner in the De Reinhardt case, that it is highly probable that, as lawyers, they held their construction of the Proclamation of 1791 to be correct; I must, however, point out that it is the duty of a lawyer, when defending a criminal, to spare no effort to procure his acquittal, and, in thinking the De Reinhardt case over in my own mind, it occurred to me that if counsel had contended for the Mississippi boundary as that established by the Act of 1774, and had concurred with the Arbitrators, that after the treaty of peace with the United States in 1783, the most north-western angle of the Lake of the Woods became the south-western boundary, they might not have saved the prisoner whom they were defending. The evidence on the trial as to the precise locality of Dalles was conflicting, but to a very slight extent. Mr. Sax, a witness for the Crown, held that Portage des Rats was the north-west angle, and that its longitude was 94° 6′ west. Mr. Joseph Bouchette placed Portage des Rats in longitude 94° 10′ west, and the north-western angle in 94° 25′. Now, Dalles is placed in 94° 40′ west longitude, and would consequently have been outside the boundaries of Upper Canada under the award of the Arbitrators.* Again, Mr. Coltman, one of the witnesses, stated that Dalles was on the River Winnipeg, about fifteen to eighteen miles from the most north-western point of the Lake of the Woods, and that it was on a line "running to the north with a little westing." If, then, it be assumed that the north-western angle of the Lake of the Woods is the true south-western boundary of Ontario, then Upper Canada, it would have been fatal to the prisoner's case for his counsel to have contended for the boundary established by the Act of 1774, and they accordingly argued most strenuously that the Proclamation issued in accordance with the Act of 1791, had considerably extended the boundaries of Upper Canada. I confess I have been a good deal surprised at some of the recent opinions given by gentlemen who claim to be experts, as to the meaning of the term "northward." Mr. Lindsay Russell declares in his evidence that this word "admits of no choice in its interpretation." Such was not the opinion of Mr. Sax, the surveyor examined for the Crown on the trial of De Reinhard in 1818, which, although instructive, is not a little amusing, and deserves to be noticed in detail.

MEANING OF NORTHWARD.

Mr. Sax—A line, supposing it ran due north from the junction of the Ohio and Mississippi Rivers, would leave the River Winnipeg five degrees out of the Province of Upper Canada—not a northward line but a due north line.

Attorney-General—Do you mean to say that a northward line is not a north line?

Mr. Sax—It is not always; it may be north by east, or north by west, or north north-west, or many other points of the compass. A due north line is one that goes direct to the north pole without any deviation whatever.

Attorney-General—And does not a northward line go to the north pole? If you had a northward line to run would you not run it to the north pole?

Mr. Sax—Perhaps I might and perhaps not; I would certainly run it northerly, though I might not run it due north.

Attorney-General—What is to prevent you taking it due north? If you had a line

* [That is, if the longitude of the north-west angle of the Lake of the Woods had been, as then supposed, in 94° 25′. The north-west point of the Lake of the Woods according to the subsequent Treaty of 1842 was in longitude 95° 14′ 38″.—G. E. L.]

to run from a given point until it struck a river, and thence to continue along the course of that river northward, would you call that drawing a northern line?

Mr. Sax—Undoubtedly it would be a northern line, but not a due north line.

Attorney-General—Would it not? Could it be east or west?

Mr. Sax—It might, according to circumstances, be a north-eastward or north-westwardly line, and yet a northern line—that is a line having a northward course or drawing nearer to the north pole as it progressed, though not an astronomical north line.

Attorney-General—Is not a north line a line northward?

Mr. Sax—Certainly, a line running due north is undoubtedly a northward line.

Attorney-General—And a line true north-westward you would call a north-westward line?

Mr. Sax—Certainly, a line due north-west is a north-westward line, but a line, for instance, that runs towards the north, notwithstanding it may gain in its course more northing than westing or easting, is not therefore necessarily a due north line, but is a northern or northward line.

Chief Justice Sewell—I really do not comprehend the distinction; to say that a northward line is not a north line, I confess, appears to me to approach the *reductio ad absurdum*. Suppose that we had a compass here, and from a given point I draw a line north-westward, that is to say terminating at a point north-westward, would not that be a due north-west line?

Mr. Sax—It would if drawn due north-west, but if in drawing it you gained northerly it would from the course of its deviation be a line northward though not a north line.

Chief Justice Sewell—Then its course northward must unquestionably be due north if a line north-westwardly is a north-west line. I want to know whether in point of fact, a fact that any man can tell as well as a surveyor, whether a line from the eastern or western point of the compass, drawn northward, is or is not a north line. Just answer that question, yes or no, and then you may explain that answer in any way you think proper.

Mr. Sax—It certainly must be to a certain extent a north line, but not a due north line.

Chief Justice Sewell—Why not?

Mr. Sax—A line drawn from any point between two cardinal points of the compass, direct to any cardinal point, is a due north or due west line as the case may be; but a line may be so drawn between two points as to be called by surveyors a northward or a southward line as it may chance to gain in the course of running it upon that point of the compass to which it is approaching; as I might draw a line from a point north-westwardly but gaining a northerly direction in its course, so that at its termination it would be a line northward from having more northing there than at the point from which I started.

I confess that I think that Mr. Sax's opinion is entitled to infinitely more weight than that of Mr. Russell.

IMPORTANCE OF A NATURAL BOUNDARY.

I have already stated the reasons which induced the Arbitrators to arrive at the conclusion that the intention of the Act of 1774, and its language, interpreted according to common sense, was to extend the old Province of Quebec, so as to include all the territories belonging to the Crown of Great Britain in America, not included in the old British Colonies, now the United States, nor in the territories belonging to the Hudson's Bay Company, nor in the Indian territories north-west of the Mississippi. The view taken by the Arbitrators was never presented to the Court in 1818, and the territory between the imaginary due north line and the Mississippi, having become part of the United States, the absurdity of placing such a construction on the Act of 1774, as would have left an important strip of territory without any government whatever did not strike the learned judges. It must be borne in mind, that although the Commission of a Governor cannot supersede an Act of Parliament, as the framer of the report of the

Commons Committee of 1880 seems to imagine, it may fairly be cited as corroborative evidence of the intention of an Act where any ambiguity of language is found to exist. The first Commission issued under the Act of 1774 to Sir Guy Carleton proves conclusively what was understood at the time to be its meaning. Immediately after the word "northward" the words "along the eastern bank of the said river" were added in the Commission. It really looks as if it had occurred to the framer of the Commission that the hastily prepared amendment to the original Act might create doubt at some future time, and yet Mr. Burke, the framer of the description, thus explained his intention: "My idea was to get the limits of Quebec, which appeared to many as well as to myself intended to straighten the British Colonies, removed from construction to certainty, and that certainty grounded on natural, indisputable, and immovable barriers—rivers and lakes where I could have them, lines where lines could be drawn, and where reference and description became necessary to have them towards an old British Colony, and not towards this new and, as was thought, favourite establishment." Is it conceivable that the author of this passage I have quoted could have intended to abandon such a natural boundary as the Mississippi for one without sense or meaning, and the adoption of which would have left without any government the very settlements which it was specially intended to include? I need only observe further that I believe that those who maintain that the boundaries were enlarged by the Proclamation issued under the Act of 1791, concur with the Arbitrators in the opinion that by the Act of 1774, the Mississippi was the western boundary of the old Province of Quebec.

EFFECT OF TREATY WITH UNITED STATES ON THE BOUNDARY.

I have now to draw your attention to the effect of the Revolutionary War on the boundary of the old Province of Quebec. When the treaty of peace was concluded at Paris, on 3rd September, 1783, boundaries were established to which I shall briefly refer. It is sufficiently evident that there was a desire to find natural boundaries, if practicable, and accordingly the line of division was carried through Lake Superior to the Long Lake, thence by water communication to the most north-western point of the Lake of the Woods, and from thence on a due west course to the River Mississippi. In a paper dated in 1876, written Mr. S. J. Dawson, the Chairman of the Commons Committee, of 1880, he argued that the diplomatists who framed the Treaty of 1783 had in view, not the Mississippi proper, but "the main artery of the vast river system to which the comprehensive name of the Mississippi was applied in those days." He maintained that "the diplomatists, who framed the treaty, knew perfectly well that the northerly waters of the Mississippi were far to the south, and that they must have meant a branch or tributary of the Missouri, called the White Earth River, which would intersect the due west line at a point over 450 miles west of the Lake of the Woods." Mr. Dawson held that "it is impossible to avoid the conclusion that the true intent, meaning, and spirit of the Treaty of 1783, was that the western boundary of Canada and the United States, and the eastern limit of Louisiana on the due west line, should be at a point upwards of 450 miles west of the Lake of the Woods." I have referred to Mr. S. J. Dawson's opinion so late as 1876, to establish that he recognized the north-western angle of the Lake of the Woods, as within the Canadian territory, and further, that he recognized the Mississippi as the western boundary. Mr. Dawson, when he stated with such confidence, that the diplomatists, in 1783, "knew perfectly well" that the northerly waters of the Mississippi proper were far to the south of such a line, must have been unaware that, eleven years after the treaty from which I have quoted, viz., in 1794, another treaty was concluded, which commences as follows:—"Whereas it is uncertain whether the River Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods in the manner mentioned in the treaty of peace between Her Majesty and the United States, it is agreed," etc. The agreement was that the two nations would make a joint survey of the said river from one degree of latitude below the Falls of St. Anthony to the principal source or sources of the said river, and if the result should be that the river would not be intersected by such a due west line, then the two parties would proceed to establish a boundary by amicable negotiation. This was subsequently accomplished by

the Treaty of 1818, establishing the 49th parallel of north latitude. At that time, thirty-five years after the period when Mr. S. J. Dawson thought that diplomatists "knew perfectly well" all about localities, it was not known whether the Lake of the Woods was north or south of the 49th parallel, and it was accordingly provided that a line should be drawn due north or due south from the north-western angle to the 49th parallel. The Mississippi of the treaty between England and France, of the Act of 1774, and of the treaty with the United States, has its source almost due south of the Lake of the Woods, where the international boundary is fixed. It seemed to the Arbitrators that under all the circumstances of the case, the true south-westerly boundary of Ontario should be held to be at the international boundary, rather than at a point due north of the source of the Mississippi. The latter would have been in nearly the same meridian, I may observe, and would have entailed much useless expense in surveys, besides disputes as to which was really the true source of the Mississippi, which according to Mr. S. J. Dawson, is to be found "in numerous brooks and countless lakelets."

NORTH-EASTERN BOUNDARY.

I shall now proceed to state the grounds on which the Arbitrators arrived at their decision as to the true boundary on the north-east. Up to the time when it became my duty to study the question as an arbitrator, I had been under the prevailing impression that the height of land was the southern boundary of the Hudson's Bay Territory. It would be impossible, on such an occasion as this, to state all the arguments which have led me to think that the pretensions of the Hudson's Bay Company were without foundation. I may, however, refer to the able papers, which the late Chief Justice Draper prepared, regarding the claims of the Company, and likewise to a memorandum from the Hon. Joseph Cauchon, who was Commissioner of Crown Lands in 1857, and which is printed in the appendix to the report of the Commons Committee as the memorandum of Mr. W. McD. Dawson. I presume that the cause of the action taken at that particular time was the approaching termination of the lease of the Indian territories. The claim of the Hudson's Bay Company, under their original charter, was described in the memorandum prepared by Mr. Dawson under the Commissioner's instructions, to be "to government, jurisdiction, and right of soil over the whole country watered by rivers falling into Hudson's Bay." I have been unable to discover any authority for so extensive a claim. There can be no doubt that the Hudson's Bay Company themselves proposed, after the Treaty of Ryswick, that the French should not trade or build any house, factory or fort to the north of the Albany River on the West Main Coast, or north of Rupert's River on the East Main Coast. It is true that under the Treaty of Utrecht the French were to restore to Great Britain a number of forts, but it does not appear to me that this restoration was ever completed. It was provided by the treaty that "within a year" Commissaries to be named by both parties were to determine the limits between the British and the French, and it is notorious that such Commissaries never did determine the boundaries, while the French King, many years after the Treaty of Utrecht, declared, with reference to the pretensions of the Hudson's Bay Company, that he was "firmly resolved to maintain his rights and his possessions against pretensions so excessive and so unjust." The Proclamation under the Act of 1791 establishes the north-east boundary at the termination of a line drawn due north from the head of Lake Temiscamingue, until it strikes the boundary line of Hudson's Bay, and it is contended by the very same parties who insist, contrary, as I think, to common sense, that in the Act of 1774, northward must mean due north, that the meaning of words which seem to me sufficiently clear, must have been to the boundary of the Hudson's Bay Territory, and not to the bay. Now, in the Act of 1774, when the territories were really meant, and not the bay, the language is not susceptible of misconstruction. The words are, "the southern boundary of the territory granted to the Merchants Adventurers trading to Hudson's Bay." But, as in the case of the western boundary, the Commissions to various Governors afford a clue to the meaning attached to the language of the Proclamation by the Imperial Government. For a considerable time the Commissions were in the precise words of the Proclamation, "to the boundary of Hudson's Bay," but in 1838 Lord Durham's Commission contained the words, "until it strikes

the shore of Hudson's Bay." Now, I wish it to be clearly understood, as Mr. W. McD. Dawson seems to imagine, that the decision of the Arbitrators was founded on the Commission, that such was not the case. In accordance with the Statute of 1791, an Order in Council was passed authorizing the proclamation, which fixed the north-eastern boundary at the boundary line of Hudson's Bay, and that I hold to be a sufficient description of the shore, although it was satisfactory to the Arbitrators to have the additional evidence afforded by the Commissions. I have already adverted to the Albany River having been proposed by the Hudson's Bay Company as their southern boundary, and it seemed to the Arbitrators that a natural boundary, following the course of that river, left to the representatives of the Hudson's Bay Company quite as much territory as they could justly claim. It would be wholly impossible for me, within the limits to which I am necessarily confined, to refer at any length to the numerous documents which led the Arbitrators to reject the pretension of the Dominion Government, that the height of land was the southern boundary of the Hudson's Bay Company's territory. The original charter limited the territorial grant to territories not in the possession of any other Christian prince, and although the subsequent Treaties of Ryswick and Utrecht affected the boundaries between France and England, yet there is no evidence of any new grant having been made to the Hudson's Bay Company. In his very able report on the boundaries, the Hon. David Mills has maintained that the effect of the Treaty of Utrecht was not to restore to the Hudson's Bay Company what it had lost by the Treaty of Ryswick. There was a warm controversy between the two Governments as to whether the term "cede" or "restore" should be used, and it is far from improbable that the British Minister may have been inspired by the Hudson's Bay Company to contend for the word "restore" while the French Minister was very urgent for the word "cede." It appears, from a letter of Mr. Prior, that according to the *cartes* sent by both plenipotentiaries, "there was no very great difference" between the claim of Great Britain and what France was willing to concede, and it is quite certain that the French never contemplated surrendering the territory claimed by the Hudson's Bay Company to the height of land. As a matter of fact, the boundaries under the Treaty of Utrecht were to have been settled by Commissaries, who never acted in the matter, and, fifty years later, Great Britain acquired the French title. Chief Justice Draper furnished a number of extracts from documents bearing on the question of title, on which he observed: "They certainly show that neither after the Treaty of Ryswick, nor that of Utrecht, when they stated the boundaries they were either willing to submit to or were desirous of obtaining, nor yet in 1750, when they set forth what they thought themselves entitled to claim under their charter, did they ever think of asserting a right to all the countries the waters of which flow into Hudson's Bay. Their claim to lands lying both northward and westward of the Bay is entirely at variance with any such idea."

OBJECTIONS TO AWARD ANSWERED.

I could not treat the important subject under your consideration with entire satisfaction if I failed to notice the numerous criticisms to which the award of the Arbitrators has been subjected. I shall dismiss very briefly that class that I believe to be numerically the most formidable, whose opposition to the award is based, not on its merits, but on the extent of territory to which Ontario is entitled under it. The decision of the Arbitrators had scarcely been announced in 1878, when an anonymous writer, over the signature "Britannicus," published several letters on the subject, in which he contended that the award was "open to grave objections," the first being that "the region is worth millions." He was told in an article, that I contributed to the press, that "the Arbitrators were appointed to decide on boundary lines, on principles of law and justice, and ought not to have been influenced by the extent or the value of the territory in dispute."

CHIEF JUSTICE HARRISON ON AWARD.

I shall offer no apology for citing a few extracts from letters of the late Chief Justice Harrison addressed to me in August, 1878, on the subject of the criticisms made on the

award: "I feel satisfied that you can give an answer to all and sundry who attack the award. I believe there never was an award made in a matter of such importance that is so little open to honest criticism. * * * Singular to say, since the award was made, I have received from Judge McDonald, of Guelph, an old lithographed map, without name or date, but evidently made long before the Constitutional Act of 1791, which indicates the northern boundary of Upper Canada to be on the precise line where we have placed it. * * * I also received the *Gazette* (Montreal) of the 15th August, containing the second letter of 'Britannicus.' These attacks, with the exception of the last, are puerile, and the last is a perfect absurdity. Assume that all which 'Britannicus' says about the territory awarded to Ontario, is true, how does that affect the validity of the award? Our duty was judicial, we had little or nothing to do with questions of policy. By the light of the evidence adduced, and the arguments propounded, we unanimously decided upon certain boundaries, for the north and west of the Province. Whether the land thus given to the Province was full of diamonds, or only of worthless rocks, was no business of ours. The surveyor who finds the boundaries of two lots of land is never influenced by the consideration that one piece is intrinsically more valuable than the other. None of the able counsel who addressed us ventured so far to take leave of his senses as to attempt to take such untenable ground."

JEALOUSY OF ONTARIO.

"Britannicus" is a representative of the class of whose opinions Mr. Royal, M.P., is one of the latest exponents. He was a member of the Select Committee of 1880, and while Mr. S. J. Dawson is the avowed advocate of the formation into a new Province of a large portion of the Province of Ontario, Mr. Royal contends that Manitoba should obtain ports on Lake Superior and Hudson's Bay. The masses outside of Ontario take no other interest in the subject than to oppose the extension of her territory, without the least reference to her legal rights. I may notice in this connection an extraordinary assertion in Mr. W. McD. Dawson's evidence, to the effect that Quebec would not have consented to enter Confederation had the legal boundaries of Ontario been believed to be, where they were placed by the award of the Arbitrators, or, perhaps I should rather say, where the witness himself stated them to be in his report in 1857. There is a very simple answer to Mr. McD. Dawson, and all who share his opinions. The boundaries of Ontario depend on the construction placed on the Statute of 1774, the Treaty of Peace of 1783, and the Proclamation in conformity with the Statute of 1791. The claim of the Dominion, as well as that of Ontario, is based on the construction of the law. Mr. McD. Dawson's recent pretension, which I need scarcely remind you is at complete variance with the former assertions both of himself and of his brother, is based on the omission to define the western boundaries in the Commissions of the Earl of Durham in 1838, and in subsequent Commissions, which, so far as I have any knowledge, is not deemed to have any legal effect by any of the disputants on the boundary question with the exception of the Messrs. Dawson.*

CLAIMS TO MORE EXTENDED BOUNDARIES.

Having noticed those opponents of the award, who do not pretend to appeal to the law in support of their pretensions, I shall advert very briefly to the views of those who contend that the Proclamation issued under the Statute of 1791 extended the territories of Ontario beyond the boundaries of the Province of Quebec as established by the Statute of 1774. The Act of 1791 declares that a message had been sent to both Houses of Parliament, signifying the royal intention to divide the Province of Quebec, and it then makes provision for the future government of the two Provinces to be created out of the old Province of Quebec. It is true that the Proclamation uses the term Canada instead of Quebec. I have already stated that although a Governor's Commission cannot be invoked in opposition to an Act of Parliament, it may fairly be referred to when the language is at all ambiguous. It seems to me that the Proclamation of 1791 could not be construed to give an extension of territory not contemplated by the Act, but the first Commission

* [See, as to this pretension, note *, p. 294, *ante*.—G. E. L.]

issued under it to Lord Dorchester, describes the territory comprised in Upper Canada to be all lying to the westward of the line from Lake Temiscamingue to the boundary of Hudson's Bay, "as were part of our said Province of Quebec." The Arbitrators concurred so far with the judgment of the Lower Canada Court in 1818, as to confine the western boundary to that established by the Act of 1774. I have now to refer to a mild criticism, which I notice merely to draw attention to what I consider a very reasonable view of the south-western boundary. Shortly after the publication of the award, a writer in the *Monetary Times*, of Toronto, criticised the decision to adopt the north-western angle of the Lake of the Woods as the south-western boundary, on the ground that the true boundary was a point on the meridian of the source of the Mississippi, due west from the international boundary. The writer took precisely the same view as the Arbitrators —that under the Statute of 1774 the western boundary was the Mississippi River, and it must be obvious that such was the view of the diplomatists who negotiated the Treaty of Peace between Great Britain and the United States. Moreover, he admitted that the award "cannot be impeached as inequitable," although he gave it as his own opinion that the Arbitrators had "stumbled" on a decision which, "if the work had to be done over again, we fail to see in what respects it could be materially improved." I admit that there is much to be said in favour of the view taken by the writer in the *Monetary Times*, which I believe was likewise the view of the Hon. Wm. McDougall, who has studied the question very carefully, and who has pronounced himself strongly in favour of the Mississippi having been the western boundary of the Province of Quebec, under the Act of 1774. Practically it is a matter of no importance whether the south-westerly boundary is at the international boundary or at a point, a few miles farther west, that would be intersected by a line on the meridian of the source of the Mississippi.

HON. WM. M'DOUGALL'S OPINION.

I have noticed Mr. McDougall's opinion on the south-westerly boundary, and it may be convenient to advert here to his criticism on the award as to the north-easterly boundary. In his speech on the subject in the House of Commons in 1880, Mr. McDougall stated that he had become satisfied that the words "boundary line of Hudson's Bay" had been a clerical error of the Attorney-General, but as he did not state the grounds for that opinion, I am unable to judge whether they are entitled to any weight. It appears, however, from his evidence before the Committee, that when in England in the year 1869, he took a great deal of trouble to ascertain whether the description was a clerical error. He searched the records of the Colonial Office without success, and then went to the Privy Council Office where he procured the Attorney-General's fiat, which, he said, he opened "with a good deal of anxiety," only to find the same language as in the original Proclamation, "to the boundary line of Hudson's Bay." He still, however, clings to his opinion that "it was an error of the Attorney-General, who, being human in those days, as in these, was liable to err." May it not be possible that Mr. McDougall himself has erred in his conclusion that an error was committed by others? The Arbitrators, I need scarcely add, did not feel themselves justified in assuming that the Proclamation issued in conformity with an Act of Parliament contained an important error. Mr. McDougall likewise stated that the Arbitrators "had found in some communications between the Imperial Government and their officers in this country, the words 'to the boundary line of Hudson's Bay.'" This seems to me an extraordinary mode of describing a Proclamation issued on the authority of the King in Council for the division of the Province of Quebec in accordance with an Act of Parliament. Mr. McDougall took no notice of the Commissions in which the shore of Hudson's Bay was declared the boundary, nor does he seem to have recollected that on every occasion when the territorial boundary was meant the description was invariably "the territory belonging to the Merchants Adventurers trading to Hudson's Bay." Mr. McDougall has acknowledged that the Hudson's Bay Company had at one time agreed to accept the Albany River as the southern boundary of their territory; and although it was never agreed to by the high contracting parties, still the fact that the Hudson's Bay Company at that period made no claim to any country south of the Albany River is confirmatory of the correctness of the award.

MR. W. M'D. DAWSON'S OPINION.

I shall now proceed to the consideration of another view of the boundary question. In the report of the Select Committee of 1880, the evidence of Mr. W. McD. Dawson is prominently brought forward as that of the person "who was the first to investigate the case on the part of Canada, in 1857, than whom no one should have a more thorough knowledge of the subject." Mr. McD. Dawson himself states in his evidence that he wrote a report in 1857 for the Commissioner of Crown Lands, which, he adds "has been the cause of all the controversy that has since taken place in relation thereto." He gave an interesting account of the circumstances under which he wrote this well-known report, having assured Mr. Cauchon, who was then his chief, "that there was no authority whatever for such a boundary" as the northern watershed of the St. Lawrence.

I may state, before noticing Mr. Dawson's evidence further, that it ought to be carefully read together with his own report of 1857, and I shall be much surprised if any different opinion from my own is arrived at, and that, I must acknowledge, is that it is a mass of inconsistency. Mr. Dawson informed the Committee that "the case presented by the Dominion was no case at all," that the learned Counsel, "after a great deal of desultory reading, failed to seize the true facts of history bearing on it," and he then referred to the prevailing ignorance of the subject, which he illustrated by a quotation from the evidence of his esteemed friend, Col. Dennis, Deputy Minister of the Interior, which I shall have to notice later.

CHARGE AGAINST DOMINION COUNSEL.

Mr. Dawson has not only made the very serious charge against the learned counsel for the Dominion, which I have just cited, but in his answer to a question whether he had himself been consulted, he declared that "it very often seems to be the habit of Governments not to consult those who know most about the case that has to be dealt with." I should feel that an apology was due from me to the learned counsel for the Dominion, Mr. MacMahon, Q.C., of Ontario, and Mr. Monk, of Montreal, for noticing such a charge, were it not that it enables me to define clearly Mr. W. McD. Dawson's peculiar position as to this question. It will not, I presume, be denied by a single member of the legal profession, or indeed by anyone else, that the duty of the learned counsel for the Dominion was to advocate the claim of the Government which they represented, to the utmost extent of their ability. The Dominion claim which was formally made in March, 1872, was to a boundary on the west on the meridian due north from the confluence of the Ohio and Mississippi Rivers, and on the north, to the height of land dividing the waters which flow into Hudson's Bay, from those emptying into the great lakes. Such was the Dominion claim made in 1872, in the form of a draft of instructions for a Commission to be appointed to survey and locate the boundaries. If the Dominion counsel had neglected to support the pretension, which they were retained to defend, they would of course be liable to censure, but it has never been pretended by any one, until very recently by Sir John A. Macdonald, that they failed from want of zeal. I am sure that the Arbitrators would have unanimously borne testimony to their exertions in support of the boundaries, which they were instructed to contend for. But then they did not consult Mr. W. McD. Dawson. Now it is quite true that is a very wide divergence between Mr. Dawson's opinions in 1857 and in 1880. Most assuredly no lawyer who had read Mr. Dawson's report of 1857, would have called on him to support the Dominion claim, and if the learned counsel could have made a forecast of Mr. McD. Dawson's evidence in 1880, he was the last person to whom they would have applied for aid in support of their case. An extract or two from Mr. McD. Dawson's evidence will suffice. He said, "I think, therefore, that in commencing their description at the shore of Hudson's Bay, the Arbitrators were correct." Then having referred to Lord Durham's Commission in 1838, which only defined the boundary into Lake Superior, Mr. Dawson states in his evidence: "From that date the Province of Upper Canada no longer subsisted as a divisional part of the old Province of Quebec." The Messrs. Dawson avow that they hold the opinion that the language in the Commission of a Governor can

supersede an Act of Parliament, although in the report it is said, "it may be remarked that the judges who appeared before your Committee seemed to be strongly of the opinion that the boundaries of provinces with constituted governments could not be altered by Commissions to Governors or Proclamations." I refer to Mr. Dawson's opinion at present, merely to demonstrate the impossibility of counsel employed to advocate the Dominion claim, being guided by his advice, valuable as he himself pronounced it to be. Let me suggest a case. Had the Government of Mr. Mackenzie, in 1878, instructed the learned counsel which it employed, to abandon altogether the pretension of Sir John Macdonald in 1872, and to adopt the Dawson theory, if I may so term it, that the true western boundary was to be determined by the Commission to Lord Durham in 1838, as terminating at the east end of Lake Superior,* and had the decision been precisely what it was, as it most assuredly would have been, what, I ask, would have been the consequence? Why, from one end of the Dominion to the other it would have been proclaimed that the Government of Mr. Mackenzie had deliberately sacrificed the rights of the Dominion to the Province of Ontario. Between those who contend for the due north line, and for the Mississippi boundary, there is at least one principle held in common. Both profess to be governed by the Statute of 1774, and to claim the boundary prescribed by that Act. They differ as to the interpretation of the Act, but they acknowledge it as their guide. The Messrs. Dawson repudiate it altogether, and claim that the Province of Canada had been deprived, by virtue of the language of a Commission, of territory over which it had exercised jurisdiction during many years. I feel assured that on one point there can be no difference of opinion, and that is, that Mr. Mackenzie's Government acted wisely in instructing their counsel to maintain the Dominion Claim precisely as it had been put forward by the Government of Sir John Macdonald. Even if Mr. Dawson's view of the question were as sound, as I believe it to be the reverse, it would have been most improper for counsel to have entertained it. Their duty was to defend the Dominion claim, not that of the Messrs. Dawson; and they performed it faithfully.

MR. WM. M'D. DAWSON'S INCONSISTENCY.

In his report in 1857, Mr. Dawson had taken the most extreme view of the claim of Ontario, then part of United Canada, and he felt it necessary to endeavour to reconcile that opinion with the one which he subsequently adopted in 1880. He declares in his last evidence: "I claimed these countries as the birthright of the people of United Canada," but he soon after admitted that "the claim put forward by me would have inured, if properly and efficiently maintained, to the benefit of Upper Canada, but that was not a point of special importance at the time. We were one Province, under one Government and one Legislature, and every acre of those vast regions was as much the property of the one as the other portion of the United Provinces." This is a specimen of Mr. McD. Dawson's mode of reasoning. The claim was either in accordance with the Act of 1774, or it was without foundation. In 1791, Mr. Dawson must admit, that all the territory in the old Province of Quebec, which was not comprised in Lower Canada, became part of Upper Canada. The disputed territory, as I will call it for the sake of convenience, was, of course, part of the United Province, and when the Provinces were again separated, Ontario retained the precise boundaries of Upper Canada. To do the Dominion Government justice, they have never pretended that Ontario was not entitled to her true boundaries, but have merely disputed what those boundaries really were. Mr. Dawson asserts that the decision of the Arbitrators "has no basis whatever of history or fact to sustain it," and he then gives it as his opinion that they had "one of three things open to them to declare," viz.: 1st, "That Ontario embraced the whole North-West Territory under the Proclamation of 1791, which I have just dismissed as untenable." The Arbitrators dismissed it likewise, although Mr. McD. Dawson's report of 1857 was calculated to induce them to adopt that boundary. 2nd, "That it was bounded by the line prescribed by the Quebec Act of 1774." That was precisely what the Arbitrators did decide, although the precise boundary was necessarily governed by the terms of the

* [See the note *, p. 294 *ante*, already referred to.—G. E. L.]

treaties between Great Britain and the United States, negotiated during the interval. 3rd, "That a more recent definition, which they seemed to have intended to adopt in part, should prevail." Mr. Dawson is completely mistaken if he imagines that the north-eastern boundary was adopted on the ground of the language in the Commissions of Lord Durham and of other Governors. The Proclamation issued under the authority of the Statute of 1791, and of an Order in Council, was the ground of the decision, although the Commissions were held to be corroborative of language not quite so clear as might have been wished. It appears, then, that although Mr. W. McD. Dawson stated in his evidence that the decision of the Arbitrators "had no basis whatever of history or fact to sustain it," the south-western boundary was determined on one of the three grounds which he himself stated in his evidence it was "open to them to declare," viz.: "that it was bounded by the line prescribed by the Quebec Act in 1774," while, as regards the north-eastern boundary, his own language in his evidence is:—"I think, therefore, that in commencing their description at the shores of Hudson's Bay, the Arbitrators were correct." I think that it will be generally admitted that the evidence of Mr. W. McD. Dawson has no weight whatever, and I shall therefore proceed to consider the course which the Dominion Government has adopted with reference to this boundary dispute.

POLICY OF DOMINION GOVERNMENT.

It will, I presume, be at once admitted that the Province of Ontario is entitled to precisely the same territory west of the Quebec boundary line to which united Canada was entitled prior to Confederation. I have already referred to Mr. Cauchon's report of 1857, which Mr. McD. Dawson claims as his own, and which is published as his in the Appendix to the Report of the Select Committee of 1880. That report, which was adopted by the Government of the day, concludes a long historical statement in the following words: — "This brief chronological sketch of the history of the Company, and of the circumstances connected therewith, must sufficiently show that they have acquired no territorial grant whatever under either of the two conditions to which their Charter was subject: first, as regards the countries then known upon 'the coasts and confines' of Hudson's Bay, because they were already in possession of another Christian prince, and were, therefore, excluded from the grant in terms of the Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, one hundred and four years after the date of their Charter, they found the country, and a long-established trade, in the hands of others, unless indeed as regards some discoveries to the north, which are of no special importance to Canada." In his evidence before a committee in 1857, Mr. McD. Dawson stated that for "the boundary designated for us by the Hudson's Bay Company, viz., the water-shed of the St. Lawrence, there is no earthly authority except themselves." Mr. Dawson's view, which gave Canada, now represented by Ontario, much more territory than was given to it by the Arbitrators, was deliberately adopted by the Government of the day. On the 16th January, 1869, a letter was addressed to the Colonial Department by the late Sir George E. Cartier and the Hon. William McDougall, from which I shall make a brief quotation:—"Whatever doubt may exist as to the 'utmost extent' of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between the Lake of the Woods and Red River." The chief opposition to the award of the Arbitrators has been raised by the professed admirers of Sir George Cartier, who declared that "no impartial investigator" would hesitate as to giving Ontario a greater extent of territory than that awarded by the Arbitrators. It is evident from another part of the letter, that Sir George Cartier and Mr. McDougall held the same views as the counsel for the prisoner in the De Reinhardt case, as the counsel for the Ontario Government, as the Hon. Mr. Mills, and as both the Messrs. Dawson, so late as 1876. I shall now advert to the negotiations in 1872 between the Governments of the Dominion and of Ontario. On the 14th March of that year, the Hon. Joseph Howe, the Secretary of State, transmitted to Lieutenant-Governor Howland a draft of instructions to be given to the Commissioner who was to be appointed to locate the boundary line. The instructions prescribed as the westerly boundary the meridian of the confluence of the Ohio

and Mississippi Rivers, known as the due north line, and as the northerly boundary the height of land. This was objected to by Ontario, and the boundary has remained ever since in dispute, although, in a report made by Sir John Macdonald on the 1st May, 1872, the importance of establishing it without delay was forcibly urged. It is to be inferred from the evidence of Col. Dennis, Deputy Minister of the Interior, that the Dominion claim made early in 1872, and which was at complete variance with the previous pretensions of that Government, was based on a report from himself to the Minister of Justice, Sir John A. Macdonald, dated 1st October, 1871. In that report it is expressly stated in section 18, that the Charter of the Hudson's Bay Company described their grant "as extending over and including all lands and territories drained by the waters emptying into Hudson's Bay," and reference is made to a copy of the Charter, marked F. On this Mr. W. McD. Dawson remarks:—"Whereas there are no such words in it, nor anything that, as I would translate that very absurd document, could possibly bear such a construction." Mr. McD. Dawson did not, when pointing out the mistake into which Col. Dennis had fallen, advert to the fact that this misquotation from a document which, it may be presumed, Sir John Macdonald accepted without ascertaining its correctness, was made the ground of a territorial claim which, although nearly ten years have elapsed, is still in dispute.

AWARD SHOULD BE ADOPTED OR SET ASIDE ON APPEAL.

The question at issue between Ontario and the other Provinces comprised in the Dominion is so important that I feel that it would be unbecoming in me to make any complaint of the treatment of the Arbitrators, who faithfully discharged a public duty which they were called upon to perform. Their unanimous award, arrived at after a careful study by each Arbitrator of the evidence in the case, and without previous consultation or communication of any kind with one another, has been attacked in a manner wholly without precedent, to the best of my belief. I am persuaded that no Government in Great Britain would repudiate an agreement entered into by its predecessors to leave a disputed question to arbitration. This, however, is a point which I have no intention of discussing. I merely wish to state that my own anxious desire would be that there should be an appeal to set aside the award to the highest judicial tribunal. In the meantime I desire to record my entire dissent from the statement of Mr. S. J. Dawson, as reported in *Hansard*, that "the award was made in the absence of anything like full information on the subject, and even without a due consideration of the information that was available;" and having by your indulgence been permitted to explain the grounds on which the award was made, I rely with implicit confidence on the judgment of an enlightened public as to its merits.

SUMMARY OF CHARGES—DEFENCE OF COUNSEL.

I shall be as brief as possible in summing up. I think the charges may be stated as—1st, "The whole case was thrown away—it looks almost as if it was deliberately thrown away." "It was most wretchedly managed on the part of the Dominion." 2nd, "They, the Arbitrators, did not affect to set up the true boundaries according to law; they laid down a mere conventional or convenient boundary." I have given the utterances of Sir John Macdonald in the House of Commons on the 18th March last as I find them in *Hansard*. In support of the first charge, Sir John Macdonald referred to the Imperial Act authorizing the surrender of Rupert's Land and the North-West to Canada, and stated that "the contention was not raised that the Act says that Rupert's Land shall be held to be whatever was in possession or deemed to be in possession of the Hudson's Bay Company;" and again, "to show how ineffectually the Dominion case was presented, I may say that that view of the subject was never presented before the Arbitrators." I fear very much that, owing doubtless to his more pressing duties, Sir John has been unable to read the papers in the boundary case, and that he has relied on others, as in the case already noticed of Col. Dennis's misquotation in 1871, to supply him with facts. Had he read the parliamentary blue book, he would have found, at page 254 in

the Dominion case submitted by Mr. MacMahon, Q.C., the statement that the 2nd section of the Act, 31 and 32 Vic., cap. 105, provides that Rupert's Land "should include the whole of the lands and territories *held or claimed to be held* by the said Governor and Company." The words underlined were placed in italics, but possibly by the framer of the report or some other official. Mr. MacMahon, however, in his address to the Arbitrators, as will be seen at the foot of pages 283 and 284, specially brought the clause under consideration as being "a confirmation of everything that the Hudson's Bay Company had been claiming under their charter," adding "that is a point which I am sure the Arbitrators will not lose sight of in dealing with the question." And yet Sir John Macdonald stated in the broadest and most explicit terms that Mr. MacMahon never presented this view to the Arbitrators, and consequently deliberately threw away the case. A word now as to the Arbitrators. I can only answer for myself. My interpretation of the Rupert's Land Act is that it was intended to convey to the Dominion the whole property of the Hudson's Bay Company, with certain specified reservations that have no bearing on the point under consideration. I did not imagine that the Act could be so interpreted as to transfer territory belonging to a third party, and I am perfectly certain that if Sir John Macdonald's construction of the statute could be maintained, it would be in direct contradiction to the spirit and intention of the Act, and a gross act of injustice. I proceed to the second charge. The duty of the Arbitrators was to find the true boundaries of Ontario, and they are charged with declaring "a mere conventional or convenient boundary." Now, for my present purpose, I shall refer merely to those pretensions which specially engaged the consideration of the Arbitrators as affecting the south-western boundary. On the claim under the Proclamation of 1791, which the Arbitrators held to be valid, notwithstanding the able arguments of counsel, of the Hon. Mr. Mills and others, including the Messrs. Dawson, one of whom, the Chairman of the Committee of 1880, fixed the boundary at the White Earth River, 450 miles west of the Lake of the Woods, they concurred in the judgment of the Quebec Court in 1818 that no territory could be awarded to Ontario that was not comprised in the old Province of Quebec as created by the Act of 1774, modified by the Treaty of 1783 with the United States and by subsequent treaties. They entirely rejected the Dominion claim to a boundary on what is known as the due north line, and having no doubt whatever that the Mississippi River was the western boundary of the old Province of Quebec by the Act of 1774, and that by the Treaty of 1783 the south-western boundary must be either at the international boundary at the north-western angle of the Lake of the Woods, or still further west, they decided in favour of that boundary which they were clearly of opinion Ontario was entitled to. On the north-east they were clearly of opinion that the height of land boundary could not be sustained, and that the true point of departure was the point on James' Bay due north from the head of Lake Temiscamingue.

CHARGE OF ADOPTING A CONVENIENT LINE REFUTED.

The sole ground for the charge that they adopted a conventional or convenient boundary is, that the line connecting the north-eastern and south-western boundaries was adopted for the sake of convenience. The Arbitrators were guided in their decisions solely by Acts of Parliament, Proclamations authorized by Orders in Council on the authority of Acts of Parliament, and international treaties. They found in the Proclamation of 1791, that after reaching James' Bay, the description proceeded thus: "including all the territory westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." If the critics of the award believe such language susceptible of the construction that it lays down a precise spot on the north-west as a boundary, then their charge might have some foundation, but the fact is that the language would have justified the Arbitrators in extending the boundaries of Ontario very considerably. They were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior, after their decision as to the south-westerly and north-easterly boundaries became known, to connect the two points by a natural boundary; and being aware of the fact that the Albany River had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they

adopted it. It is not a little singular that the award was promptly accepted by Ontario, although the only questions of doubt were decided in favour of the Dominion. Both on the west and north the doubts were whether Ontario should not have had more territory.

THE MANITOBA BOUNDARY ACT.

I must say a few words on the Boundary Act of last session, which appears to me to be a most extraordinary attempt to solve the question in controversy. The objection made to the award of the Arbitrators is that they did not find the true boundaries, but adopted a convenient boundary. I need not repeat my refutation of this allegation, but even on the assumption that it had any force, it would not apply to the western boundary, regarding which the Arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods, was the true point of departure. The northern boundary which, owing to the vagueness of the language employed in the Proclamation issued under the Act of 1791, is more open to doubt, remains still in dispute between the Dominion and Ontario, so that the Act has simply engaged the Province of Manitoba in the controversy as to one branch of the award, and has thus made confusion worse confounded. Moreover, the Dominion is now contending for a territory on the north of Ontario and eastward of Manitoba's new boundary, which could scarcely be erected into a Province. I do not think, however, that the Act of last session will prove disadvantageous to Ontario. It has put an end to the Dawson scheme of a new Province of Algoma, and it has rendered it almost necessary to settle the western boundary, in which Manitoba is interested, without reference to the northern boundary, with which that Province has no special concern. The western boundary is not only the most important, but the least open to doubt, as I think I have already clearly demonstrated. I will only add in conclusion that the Arbitrators were of opinion that having reference to all the facts of the case, the boundaries set forth in the award were supported to a larger extent than any other line by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal.

MR. LYON, STIPENDIARY MAGISTRATE, TO THE ATTORNEY-GENERAL OF ONTARIO.*

RAT PORTAGE,
September 30th, 1881.

To the Honourable OLIVER MOWAT,
Attorney-General.

SIR,—I write to you for advice and direction in respect to the Division Courts. At the sitting of the Court held in May there were a number of cases disposed of, and the money was paid in some cases before execution; in others, afterwards. The only parties who disputed the jurisdiction of the Court were the railway contractors.

There were two cases entered subsequently that are not yet disposed of, and the parties will attend the next sitting of the Court to have their accounts adjusted.

Is it the intention of the Government that I should continue to act as if no question of jurisdiction had been raised, and that the clerk receive and enter suits and issue executions as if no interruption had taken place? So far we have kept the Court on foot; but, while claiming to have the right to enforce the civil law, have not encouraged litigation, nor have we advised parties having debts to collect not to enter them in suit. But suits have not been entered on account of the executions against the railway contractors not being enforced.

Waiting your advice,

I remain, Sir,

Your obedient servant,

W. D. LYON,
Stipendiary Magistrate.

* Sess. Papers, Ont., 1882, No. 23.

REPORT OF THE ATTORNEY-GENERAL OF ONTARIO ON THE BOUNDARY QUESTION, 1st NOVEMBER, 1881.*

The undersigned has the honour to submit the following report on the controversy of the last few years with respect to that large part of this Province to which the Dominion Government persistently refuse to acknowledge our title, notwithstanding the unanimous award, three years ago, (3rd August, 1878,) of the Right Honourable Sir Edward Thornton, Her Majesty's Ambassador at Washington, the Honourable Chief Justice Harrison, and the Honourable Sir Francis Hincks, K.C.M.G., mutually chosen by the two Governments to decide the matter.

The territory in question consists of two parts, standing on a different footing from each other: (1) Territory lying north and west of the Height of Land which divides the waters flowing into the Great Lakes from those flowing into Hudson's Bay; and (2) the territory lying south and east of the same Height of Land. By an Act passed at its last session, the Federal Parliament transferred to the Province of Manitoba (so far as regards Provincial jurisdiction) the claim which the Federal Government made to the territory south and east of the Height of Land, comprising an area of about 7,000 square miles, and to so much of the territory north and west of the same Height of Land as lies between the Province of Manitoba and the Province of Ontario, comprising a further area of about 32,000 square miles.

The territory lying to the *north* and *west* of the Height of Land is claimed on behalf of the Dominion, as having become entitled to it in 1870, under a transfer or release of the interest theretofore claimed by the Hudson's Bay Company therein, under their Charter dated 2nd May, 1670.

The disputed territory lying to the *south* and *east* of the same Height of Land was not claimed by the Hudson's Bay Company under their Charter, nor was there any ground or pretence for so claiming it. Before 1870 this part had been treated at all times, and for all purposes, as belonging to this section of Canada. As such it had before Confederation been the subject of grants, licenses and other transactions on the part of the Provincial Government. So much of the territory as was from time to time settled or occupied by a white population was governed, without any question on the part of anybody, by the laws, courts and officers of Upper Canada; and since Confederation the same territory has uninterruptedly been governed by the laws, courts and officers of Ontario; it has had municipal organization as part of this Province; the Ontario District of Algoma has for all purposes of the Dominion and Province been considered to include it; and Provincial money has from time to time been expended in making surveys and bridges and other improvements, and in administering justice and maintaining peace and order in the territory.

The land on this side of the Height of Land is part of certain territory which was the subject of an Order in Council of the Government of Canada, and of a treaty by that Government with the Indians, as long ago as 1850. On the 11th January, 1850,† the Government of Canada, by this Order in Council, which was approved by His Excellency the Governor-General, authorized the Honourable W. B. Robinson "on the part of the Government to negotiate with the several tribes [of Indians] for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron, or of such portions of them as may be required for mining purposes." In pursuance of this authority, Mr. Robinson, "on behalf of Her Majesty the Queen," on the 7th September, 1850, entered into an agreement with "the principal men of the Ojibbeway Indians, inhabiting the northern shore of Lake Superior, in the said Province of Canada, from Batchewanaung Bay to Pigeon River at the western extremity of said lake," whereby, in consideration of £2,000 in hand paid, "and for the further perpetual annuity of £500 to be paid and

* Sess. Papers, Ont., 1882, No. 23.

† Book of Arbitration Documents, p. 23.

delivered to the said chiefs and their tribes at a convenient season of each summer, not later than the 1st day of August, at Michipicoten and Fort William, they the said chiefs and principal men [did] surrender, cede, grant and convey unto Her Majesty, her heirs and successors, all their right, title and interest in the territory " therein described ; and thereby, " on behalf of Her Majesty and the Government of this Province," it was agreed to make the said payment, " and, further, to allow the said chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government." The agreement also contained provisions with respect to the sale of mining locations or other property by " the Government of this Province." The Government of the Province acted on this treaty, with the consent and approval of Her Majesty's representative, the Governor-General, up to the time of Confederation ; and the Governments of Canada and Ontario continued to act upon it afterwards.

Assuming that this territory, south and east of the Height of Land, is not within Ontario, the Dominion had no claim to it until an Order was made by Her Majesty in Council, on the 31st July, 1880, whereby it was ordered and declared that " from and after the 1st of September, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the Colony of Newfoundland and its dependencies) become and be annexed to and form part of the said Dominion of Canada, and become and be subject to the laws, for the time being, in force in the said Dominion, in so far as such laws may be applicable thereto."*

The claim to the territory north and west of the Height of Land, as well as to the land south and east, is not new. All which is now in dispute, and more, were always claimed as part of Upper Canada by the Province of Canada, in its contests with the Hudson's Bay Company and otherwise, long before the Confederation Act was thought of, and up to the time that that Act went into effect. The same claim was continuously insisted on afterwards by the Government of the Dominion, until the contest with the Company was put an end to in 1870, by its interests on this continent (whatever they were) being transferred to Canada.

To prevent the recognition of the award by members of the House of Commons from constituencies lying within the other Provinces, the award has been represented as giving to this Province an extensive territory to which it had no right ; while the truth is, that the right of Ontario to all the territory awarded was established by an immense mass of evidence. The further fact is kept in the background, that the territory awarded to this Province is less than the Governments of the country had, up to the year 1870, justly claimed to belong to this section of Canada.

With the same view, it has been suggested that this territory, if confirmed to Ontario, would, in the not distant future, give to this Province undue weight in the Dominion. With this territory Ontario has an area of about 200,000 square miles ; but British Columbia has 390,344 square miles ;† Keewatin District (as limited by the recent Manitoba Act), about 260,000 ; and Quebec is admitted to have 193,355,† and probably has considerably more, as the estimate of that area appears to assume that the Province of Quebec does not extend to the shore of Hudson's Bay. Outside of its present Provinces, the Dominion has still an estimated area of more than 2,000,000 square miles for new Provinces. The loss of the territory in dispute would reduce the area of Ontario to 109,480 square miles.† Why should the area of our Province be reduced to half that of Quebec ? or to less than half the area of Keewatin ? or to less than one-third the area of British Columbia ? The addition of the same territory to Manitoba would give to that Province an area of 154,411 square miles.† Why is the area of Ontario to be reduced, and that of Manitoba extended, until Manitoba shall have an area one-half greater than Ontario ?

* [This Order in Council is printed *ante*, p. 402.]

† Senate Debate on the Manitoba Bill of 1881, pp. 607, 608.

Having reference to the figures thus given, the notion of Ontario having in the future undue influence in the Dominion, as compared with its other Provinces, is absurd, even if the Provinces were represented in the House of Commons as Provinces; which they are not. The members of that body represent the counties, ridings, districts, and cities of the Dominion, and would represent their respective constituencies whether these, for Provincial purposes, were in one Province or another.

The undersigned has said that our claim to the territory awarded to us is not new. A few of the many facts which illustrate this statement may be mentioned.

On the 4th December, 1856,* the Secretary of State for the Colonies addressed to the Governor-General of Canada a despatch respecting the Hudson's Bay Company; and respecting certain important questions which the Company had raised, and the steps which Her Majesty's Government had in contemplation regarding them. The despatch referred, amongst other things, to the Company's claim to "all the region under British Dominion watered by streams flowing into Hudson's Bay;" and stated that Her Majesty's Government had "determined on bringing the whole subject under the investigation of a Committee of the House of Commons at the earliest convenient time;" that the inquiry would be mainly directed to the question of the renewal of a certain license granted to the Company in 1838, but that "it must incidentally embrace the general position and prospects of the Hudson's Bay Company; and, as many points might arise in the course of inquiry which might affect the interests of Canada, His Excellency was instructed to consider, with the advice of his Council, the question whether it might be desirable to send witnesses to appear before the Committee, or in any other manner to cause the views of the Provincial Government, and the interests of the Canadian community, to be represented before the Committee.

In reply, on the 17th January, 1857, a Minute of Council,† approved by His Excellency, was transmitted to the Colonial Secretary, in which it was stated, amongst other things, that "the general feeling here is strongly that the western boundary of Canada extends to the Pacific Ocean;" that the Committee of Council were most anxious that Canadian interests should be properly represented before the proposed Committee of the House; and that opportunity should be afforded for carefully and closely watching any evidence which might be adduced before that body; that the Committee would take the earliest occasion to suggest to His Excellency the manner in which they conceived this could be best accomplished; that situated as Canada is, she necessarily has an immediate interest in every portion of British North America; and that the question of the jurisdiction and title claimed by the Hudson's Bay Company is to her of paramount importance.

An official paper by the Commissioner of Crown Lands of Canada was prepared,‡ claiming, on grounds therein elaborately set forth, that the westerly boundary of the Province extended "as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi which a due west line from the Lake of the Woods intersected, which would be the White Earth River;" and with respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction."

The Honourable William H. Draper, Chief Justice of the Court of Common Pleas of Upper Canada, was appointed by the Government of Canada as a special agent to represent "Canadian rights and interests before the proposed Committee of the House of Commons." Instructions for his mission were communicated to him by letter on the 20th February, 1857.§

* Sessional Papers, Canada, 1857, Vol. 15, No. 1. The despatch is printed *ante*, p. 1.]

† Sessional Papers, Canada, 1857, Vol. 15, No 17. [The Minute in Council is printed *ante*, p. 2.]

‡ Book of Arbitration Documents, p. 243; Journals of Legislative Assembly, Canada, Vol. 15, No. 17 (B). [This document is printed *ante*, p. 6.]

§ [Printed *ante*, p. 4.]

All these papers were brought down to the Legislative Assembly as Returns to Addresses of that honourable body, dated respectively the 2nd and 16th March, 1857, and are to be found in the appendix to the Sessional Papers of that year (No. 17).

The Government of Canada thus sent Chief Justice Draper to England for the purpose of resisting the very claim of the Hudson's Bay Company which the Dominion afterwards made and still makes as the transferees of that Company; and that distinguished jurist resisted the Company's claim accordingly before a Committee of the House of Commons, and otherwise, in that year.

In the same session, viz., on the 11th May, 1857, the Legislative Assembly appointed a Select Committee to receive and collect evidence and information as to the rights of the Hudson's Bay Company under their charter, and as to other matters relating to the territory. The only evidence taken was against the claim then made by the Company, and now made by the Federal authorities. The Committee made their report on the 8th June, 1857, submitting the evidence to the consideration of the House. The House was prorogued on the 10th June.

Meanwhile, viz., on the 28th May and 4th June, 1857, Chief Justice Draper was examined before the Committee of the House of Commons in England; and, on the subject of the claim of the Hudson's Bay Company, stated (among other things) as follows: "At present it is understood by us that the Hudson's Bay Company claim, as a legal right, all the land which is drained by any streams, no matter how remote their sources may be, which flow into either the Hudson's Bay Straits or Hudson's Bay. We consider that that is an ill-founded claim, principally upon this ground—that it is a claim of which we can find no trace until a very modern period, and is quite inconsistent with the claims advanced by that Company for nearly a century and a half. To save time, I have prepared extracts from various documents emanating from the Company themselves, with some few other documents. It is a paper which it would save a great deal of time to put in, because I can give every place where the extracts are taken from, and therefore reference to the original documents can always be had. I would also desire to say that in every extract which I have made, I have made it a complete extract of all that is stated on the question; and if it involves anything favourable to the Hudson's Bay Company, it will be found in those portions of which I have made the extract."* The paper thus referred to as containing, not merely what favoured the Canadian claim, but also everything favourable to the Hudson's Bay Company, was amongst the papers before the Arbitrators in 1878, having been printed in the Book of Documents for the purposes of the arbitration. (Pages 235 and 240.)

Afterwards, viz., on the 12th of June, 1857, the learned Chief Justice communicated to the Government of Canada his opinion, that if the matter were submitted to the Privy Council, its decision would give "to Canada a clear right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim,"† though not the "territory west of the westernmost head of the Mississippi."† The Chief Justice thought that the Canadian Government had claimed too much in claiming beyond that point, to the Rocky Mountains. The award which the Federal authorities refuse to recognize has assigned to us part only of the territory described by the Chief Justice as territory to which we had a "clear right."†

It is further to be noted that public money was from time to time expended by the Province of Canada in opening roads, and otherwise in the now disputed territory.‡

After Confederation, the same views were taken of the territorial question, and the like course of action was pursued by the Dominion Government and Parliament, as had been adopted by the Government and Parliament of the Province.

Thus, in 1868, the sum of $20,000 was appropriated by the Dominion for the construction of a road from the Lake of the Woods to Fort Garry, on Red River; and

* Hudson's Bay Report, Coms., Eng., 1857, p. 212, Question 4056, p. 374, etc. [See the paper in question, p. 37, *ante*, and another paper submitted by the Chief Justice to the Secretary of State for the Colonies, p. 32, *ante*.]

† Book of Arbitration Documents, p. 391. [The letter is printed *ante*, p. 47.]

‡ See Sessional Papers, Canada, 1864, No. 62.

the money was spent accordingly. The whole of this road was in territory which the Dominion authorities now say was then no part of Canada.

Again, in an official letter of the Canadian Ministers, Sir George E. Cartier and the Hon. William McDougall, to Sir Frederic Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, they pointed out that "the boundaries of Upper Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include 'all the territory to the westward and southward' of the 'boundary line of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada;'" and they added that "whatever doubt may exist as to the 'utmost extent' of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between the Lake of the Woods and Red River. The Government of Canada, therefore, does not admit, but on the contrary denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil, beyond that of squatters, in the territory "between the Lake of the Woods and Red River," that being the territory to which the matter which called forth the letter referred.* The Federal Government thus claimed for us a western line beyond the line which the Arbitrators have awarded to us, and insisted that no "impartial investigator" of the evidence could doubt our right to it.

So much as to the views and acts of the Province of Canada and Dominion of Canada until the year 1870. In that year the Federal Government ceased to be "impartial investigators of the evidence." Having obtained a transfer of the interests of the Hudson's Bay Company, that Government soon afterwards reversed the position always theretofore taken in this country with regard to the extent of Canada. They now insist that Canada had more contracted limits than even its old antagonists, the Hudson's Bay Company, had argued for; and that the views maintained and acted upon by Canadian Governments and public men up to 1870 were so utterly and clearly unfounded, that, though confirmed as to part of the territory by solemn award, the award must be resisted both passively and actively, regardless of consequences. The particulars of this transfer of 1870 may here be stated.

By the British North America Act (30 and 31 Victoria, ch. 3, sec. 3), the Provinces of Canada, Nova Scotia and New Brunswick were formed into one Dominion under the name of Canada. By section 6 it was enacted that "the parts of the Province of Canada . . . which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces—the part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec." And by the 146th section it was enacted that the Queen, by the advice of Her Majesty's Privy Council, might "admit Rupert's Land and the North-Western territory, or either of them, into the Union, . . . subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."

By a joint Address to Her Majesty from the two Houses of the Canadian Parliament, in December, 1867, it was prayed that Her Majesty would be graciously pleased "to unite Rupert's Land and the North-Western territory with the Dominion of Canada," and it was therein stated "that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement would be considered and settled in conformity with the equitable principles which have uniformly governed the Crown in its dealing with the aborigines." †

By another joint Address to Her Majesty from the two Houses of the Canadian Parliament, in May, 1869, it was again prayed that Her Majesty would be graciously pleased "to unite Rupert's Land on the terms and conditions" therein mentioned (but

* Book of Arbitration Documents, p. 323. [Printed *ante*, p. 155.]

† Journals, Canadian Senate, 1867, p. 144. [Printed *ante*, p. 128.]

not material to the present question), "and also to unite the North-Western territory with the Dominion of Canada," as before prayed.*

Accordingly, by an Order in Council, dated 23rd June, 1870, it was ordered and declared by Her Majesty, by and with the advice of Her Privy Council, that from and after the 15th July, 1870, "the said North-Western Territory shall be admitted into and become part of the Dominion of Canada" upon certain terms and conditions therein referred to, and that "Rupert's Land shall, from and after the said date, be admitted into and become part of the Dominion of Canada" upon certain other terms and conditions in the said Order mentioned.†

It has of late been argued, or asserted, that this Order deprived Ontario of any territory theretofore claimed by the Hudson's Bay Company. No contention could be more unfounded. (1) Her Majesty had no power to deprive Ontario of any part of its territory, the British North America Act having expressly declared that the territory "which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario;" and the enactment as to the annexing of the North-Western Territory by Her Majesty in Council was expressly "subject to the provisions of this Act." (2) The Order in Council did not intend to take away any part of our territory.

A year after the claims of the Hudson's Bay Company had been disposed of, viz., on the 17th July, 1871, His Honour the Lieutenant-Governor of this Province, by a despatch addressed to the Secretary of State for the Provinces, called the attention of the Federal Government "to the necessity which exists for the settlement of the true boundary or division line separating the Province of Ontario, from what is known as the North-West Territory," observing that "the importance of accomplishing this object (had) been recognized both by the House of Commons and the Legislature of this Province, and appropriations made by them for defraying the expense of a Commission for that purpose, one member of which to be appointed by His Excellency the Governor-General, and the other by" the Lieutenant-Governor. The despatch referred to "the necessity of having the boundary line in question ascertained without delay."‡

Accordingly, in July, 1871, the Government of the Dominion appointed their Commissioner, and in September, 1871, the Ontario Government appointed theirs.§ These Commissioners were to co-operate with one another in determining the boundary.

On the 1st of October, 1871, J. S. Dennis, an officer in the service of the Dominion Government, at the request of its Premier, made a report to him on the question of the boundaries "between the Province of Ontario and the Dominion lands, or North-West Territories."‖ In this report Mr. Dennis maintained—contrary to all Canada's past contentions with the Hudson's Bay Company, and in opposition to all past acts of the successive Governments of Canada—that Ontario did not extend in the west beyond the meridian of the confluence of the Ohio and Mississippi Rivers (longitude about 89°);¶ thus excluding not only "the country between the Lake of the Woods and Red River," but also the Lake of the Woods itself and a breadth of some hundreds of miles between that lake and the said meridian, to which territory the award has declared Ontario to be entitled. The territory thus said not to belong to this Province includes the village of Prince Arthur's Landing and the Township of McIntyre, with a population of 2,500; the Township of Oliver, with a population of 500; the Village of Fort William and Township of Neebing, with a population of 1,250; Mattawan, with a population of 250; and Sibley, 750. There is a further population along the line of the railway works.**

The report of Mr. Dennis further alleged that the northern boundary of Ontario was the Height of Land already mentioned.

In support of these views, the report contained a statement that the charter of the

* Journals, Canadian Senate, 1869, p. 125. [Printed *ante*, p. 183.]

† Book of Arbitration Documents, pp. 405 *et seq.* [Printed *ante*, p. 200.]

‡ Sessional Papers, Ontario, 1873, No. 44, p. 3. [The despatch is printed *ante*, p. 206.]

§ Book of Arbitration Documents, p. 340. [The Orders in Council are printed *ante*, pp. 207, 208.]

‖ Report of Boundary Committee, House of Commons, Can., 1880, p. 1. [Printed *ante*, p. 209.]

¶ [The exact longitude is stated to be 89° 9′ 27″ 16, west of Greenwich.—G. E. L.]

** See Senate Debates for 1881, p. 607.

Hudson's Bay Company (dated 2nd May, 1670,) described the grant to the Company as "extending over and including all lands and territories drained by the waters emptying into Hudson's Bay." The report was made *ex parte*, and without any communication with the Government of Ontario. The haste with which it was prepared is manifest from the fact that the charter contained no such description as the report thus professed to quote. That description was merely the construction which had in recent times been placed on the charter by the Company itself, and which as well the companies contending with the Hudson's Bay Company, as the Province and Dominion of Canada, had always repudiated. The report makes no reference to, and no doubt was prepared without its author being aware of, some of the most important documents and other proofs on which the rights of Ontario are based. No copy of the report appears to have been communicated to the Ontario Government; and the report was not known to this Government until after it had been produced by Mr. Dennis to the Committee of the House of Commons of Canada in 1880.

By an Order in Council, approved on the 28th of November, 1871,* the constitutional advisers of His Excellency the Governor-General of Canada obtained the sanction of the Crown to the statement that "it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question should be as far as possible expedited."

On the 9th of March, 1872,† the Hon. William McDougall, the Commissioner of the Ontario Government, reported that he had not yet been put in communication with the Commissioner appointed on behalf of the Dominion, but had conferred with certain officers and members of the Dominion Government, and had reason to believe that the Commissioner of the Dominion would take the ground that a line due north from the junction of the Ohio with the Mississippi is the legal western boundary of Ontario, or that the height of land west and north of Lake Superior is the utmost western limit of the Province. Mr. McDougall further stated that his own opinion was that the limit was much further west.

A few days afterwards, viz., on the 14th of March, 1872,‡ a communication was made by the Secretary of State to the Lieutenant-Governor of this Province, claiming in effect, and for the first time, that the westerly boundary of the Province extended only to the more limited of the two boundaries mentioned by Mr. McDougall, viz., to the meridian of the junction of the Ohio and Mississippi, and that the northern boundary extended only to the height of land dividing the waters which flow into the Hudson's Bay from those emptying into the valleys of the Great Lakes. This claim was embodied in a draft of instructions prepared by the Dominion Government, to be given to their Commissioner. The claim was promptly repudiated on behalf of this Province by an Order in Council, passed on the 25th of March, 1872,§ approved by the Lieutenant-Governor, and communicated at once to the Federal Government, to the effect that the Province claimed that the boundary line was very different from the line so defined by the said instructions; that the Province could not consent to the prosecution of the Commission for marking on the ground the line so defined; and that the Commissioner appointed by the Government of Ontario should, therefore, be instructed to abstain from taking any further action under his commission.

By an Order in Council, approved on the 9th of April, 1872,‖ the Federal advisers of His Excellency the Governor-General obtained the assent of the Crown to the opinion, that "It is of the greatest consequence to the peace and well-being of the country in the vicinity of the dividing line that no question as to jurisdiction, or the means of prevention or punishment of crime, should arise or be allowed to continue," and that "both

* Sessional Papers, Ontario, 1873, No. 44, p. 6. [Printed *ante*, p. 213.]

† *Ibid.*, p. 8. [Mr. McDougall's letter is printed *ante*, p. 216.]

‡ *Ibid.*, pp. 14, 15. [Printed *ante*, p. 219.]

§ *Ibid.*, p. 17. [Printed *ante*, p. 226.]

‖ Book of Arbitration Documents, p. 342; Sessional Papers, Ontario, 1873, No. 44, p. 18. [Printed *ante*, p. 228.]

Governments would feel it their duty to settle without delay upon some proper mode of determining, in an authoritative manner, the true position of such boundary."

On the 26th of April, 1872,* the Federal Government applied to the Government of Ontario for payment of certain accounts, amounting to $4,035.75, for the maintenance of a police force at Thunder Bay, and for cash advances for the Court House at Prince Arthur's Landing, the said localities being west of the due north line. On the 25th of June, cheques in favour of the Dominion Government for the sums of $215.02 and $793.31 respectively were transmitted by his Honour the Lieutenant-Governor to the Government at Ottawa, in discharge of items in connection with the Court House at Prince Arthur's Landing; and with reference to the other items, for the maintenance of a police force at Thunder Bay, His Honour requested information as to the authority, from the Province of Ontario, upon which the Province was asked to pay therefor. This information does not appear to have been given, and no further payments appear to have been made.

By another Order in Council, approved on the 16th of May, 1872,† His Excellency's Federal advisers obtained the assent of the Crown to the further statement, in reference to the disputed territory, that "it is very material that crime should not be unpunished or unprevented;" and "in this view," the Government of Ontario was "invited to concur in a statement of the case for immediate reference" to the Judicial Committee of the Privy Council of England. It was further stated that "this is the more necessary, as no conventional arrangement between the two Governments as to boundary can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is by law within the Province;" and that "the mineral wealth of the north-west country is likely to attract a large immigration into those parts, and with a view to its development, as well as to prevent the confusion and strife that is certain to arise and continue among the miners and other settlers so long as the uncertainty as to boundary exists," the Government of Ontario was "urged to arrange with that of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royalties, etc.," and for this purpose it was suggested that the Government of Ontario should "appoint a Commissioner to meet the Hon. J. C. Aikins, and arrange some joint system; and that any such arrangement, when ratified by the two Governments, shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of boundary; and that, after such decision, titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall, under the decision of the Judicial Committee, be the proper party to legalize the same."

By an Order in Council, approved by His Honour the Lieutenant-Governor, on the 31st day of May, A.D. 1872,‡ regret was expressed that the Government of Canada did not propose in any respect to modify its views with reference to the boundaries, opposed as those views were to the general tenor of the expressions and conduct of the Governments of the late Province of Canada and of the Dominion in the past. Regret was also expressed that the Government of Canada was not prepared to negotiate for the purpose of arriving at a conventional arrangement as regards the boundaries. It was inferred that the Government of Canada disapproved of that course, in consequence of the difficulty stated in the following extract from a memorandum of the Minister of Justice:—"No conventional arrangement between the two Governments as to boundary can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is by law within the Province;" and attention was called to the third clause of the Act of the Imperial Parliament, passed 29th of June, 1871, cap. 28, which is in these words: "The Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation

* Book of Arbitration Documents, p. 346; Sessional Papers, Ontario, 1873, No. 44, p. 26. [The letter and papers are printed *ante*, pp. 231, 235-7.]

† Sessional Papers, Ont., 1873, No. 44, p. 20; Book of Arbitration Documents, pp. 343, 344. [Printed *ante*, p. 232.]

‡ Book of Arbitration Documents, p. 344. [Printed *ante*, p. 233.]

of any such increase, or diminution, or alteration of territory in relation to any Province affected thereby." It was observed, that "under the operation of this clause, it is quite possible to arrive at a conventional settlement of the question by the joint action of the Executive and Legislative authorities of the Dominion and of the Province;" and that, with reference to the emergency arising out of the expected immigration during the spring and summer, "a short Act of the Parliament of Canada—providing that the boundaries of Ontario should, for the purposes of criminal jurisdiction, and so far as the Parliament of Canada can provide, be deemed, pending the settlement of the question, to extend as far as the limits which are specified in the memorandum transmitted to the Government of Canada by this Government—would, though open to some objection, afford the best practicable solution of that difficulty." With reference to the proposed submission to the Judicial Committee of the Privy Council, it was remarked that "the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time;" and the opinion was expressed that "upon the whole, the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by a reference to a Commission sitting on this side of the Atlantic;" and, "without for the present dealing definitely with the proposal of the Government of Canada for a reference to the Judicial Committee," this counter-suggestion was made to that Government. A "strong conviction" was expressed "that it is the duty of the Government of Ontario to retain, in the meantime, the control of the lands within the boundaries claimed by it; but, as it is anxious that the policy of the Government of Ontario with reference to the disposition of these lands should, so far as practicable, conform to the views of the Government of Canada, it was agreed "that an effort should be made to avoid the possible difficulties arising from the claims put forward by that Government," and with this view, the Honourable R. W. Scott was requested to confer with the Honourable J. C. Aikins, as proposed by the despatch of the 16th May.

By another Order in Council, approved on the 7th November, 1872,* His Excellency the Governor-General's Federal advisers obtained the further sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of Ontario had already been affirmed by a Minute in Council," and that "the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensable."

On the 18th March, 1873, T. K. Ramsay, Esq., Q.C., who had previously been employed for this purpose by the Dominion Government,† made a report, giving what he called "the strictly legal view" of the question, and setting forth elaborately and ably whatever could be found or said in support of the limits suggested in Mr. Dennis' report. Mr. Ramsay's investigations and report were made without the knowledge of the Ontario Government, and without his having seen some important documents in favour of the claim of Ontario which came to light afterwards, and were submitted to the Arbitrators.‡ The report was addressed to the Hon. A. Campbell, Postmaster-General, and has appended to it the following memorandum with reference to the territory south and east of the height of land:

"In the report submitted, the strictly legal view has alone been considered, because it alone seemed to be within the scope of my instructions; but from the course of my investigations I could not fail to see that, beyond this, there is another consideration not less important, and that is, the equitable side of the question. In creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed. Now, it is incontestable that up to 1867 the Government of Canada, *de facto* extended to the height of land which forms the water shed of the water system of the St. Lawrence and the Great Lakes. This is made

* Sessional Papers, Ontario, 1873, No. 44, p. 23. [Printed *ante*, p. 238.]
† Report of Boundary Com., House of Commons, Can., 1880, p. 209.
‡ Book of Arbitration Documents, pp. 17, 388, 402, 411-419, etc.

apparent by the registers of the Executive Council, by which we find that a Commissioner was appointed to obtain the surrender of the claims of the Indians to the lands in the vicinity of Lakes Superior and Huron, or of such of them as may be required for mining purposes. The Commissioner executed a treaty by which he obtained a portion of the very territory that would be cut off from the Province of Ontario, if the dispositions of the Act of 1774 were literally observed; 'from the Batchewanoning Bay to Pigeon River, at the western extremity of the said lake (Superior), and inland to that extent to the height of land which separates the territory covered by the charter of the Honourable the Hudson's Bay Company from the said tract, and also the islands in the said lake within the boundaries of the British possessions therein.' There are doubtless other Acts of authority beyond the meridian indicated in the foregoing report. In the De Reinhardt trial, Mr. Coltman, a Magistrate for the District of Quebec, and a Commissioner in the Indian Territory, in his evidence, said:—'Il est notoire que les writs des magistrates du district ouest du Haut Canada sont émanés pour être exécutés à Fort William.' It would, therefore, seem that in fairness to the Province of Ontario the old line of the height of land should be adopted as the western as well as the northern boundary of the Province of Ontario."

The Federal Parliament was in session at the date of this report, and was prorogued on the 13th of August following. Parliament again met on the 23rd October, and was prorogued on the 7th November, a change of Government having in the meantime taken place. A general election was held in January, 1874, and Parliament again assembled on 26th March, and was in session until 26th May. During these occurrences the negotiations between the Dominion Government and the Government of Ontario made no material progress.

On the 26th of June, 1874, a provisional arrangement was made for the sale of lands in the disputed territory, by the adoption of a conventional boundary on the west and north.* It was agreed, that this conventional boundary should, on the west, be the meridian line passing through the most easterly point of Hunter's Island, run south until it should meet the boundary line between the United States and Canada, and north until it should intersect the 51st parallel of latitude; and that the 51st parallel of latitude should be the conventional boundary of the Province on the north; that until the true boundaries should be ascertained, all patents for lands in the disputed territory to the east and south of these conventional boundaries should be issued by the Government of Ontario; and all patents for lands on the west or north of these conventional boundaries should be issued by the Dominion Government; that when the true west and north boundaries of Ontario should be definitely adjusted, each of the respective Governments should confirm and ratify such patents as might be issued by the other for lands then ascertained not to be within the territory of the Government which granted them; that each of the respective Governments should also account for the proceeds of such lands as the true boundaries, when determined, might show to belong of right to the other; that the Government of the Dominion should transfer to the Government of the Province all applications for lands lying to the east and south of the conventional boundaries, and also all deposits paid on the same; that the Ontario Government should transfer to the Dominion Government all applications for lands lying to the west or north of the same boundaries, and likewise all deposits paid thereon; that such of the said applications as are *bona fide* and in proper form should be dealt with finally according to the priority of the original filing; and that where applications for the same lands have been filed in the Departments of both Governments, the priority should be reckoned as if all had been filed in one and the same office. The westerly provisional line thus agreed upon is in longitude about 91°.†

* Book of Arbitration Documents, p. 347. [See the agreement p. 244, *ante.*]

† [The longitude of the Westerly Provisional Boundary line of the Province, being the meridian of the most easterly point of Hunter's Island, is variously shewn on the several maps consulted as ranging from 91° 4′ 33″ to 91° 18′, probably due to the configuration of the island not being perhaps accurately known. Mr. Thompson, the N. W. Co.'s astronomer, who was also a principal surveyor to the international boundary commissioners under the Treaty of Ghent, appears to place the most easterly point of the island in the longitude first above mentioned—viz.: 91° 4′ 33″; Mr. Dawson in his map of the Dawson Route, etc., places it at about 91° 14′; and the Ontario Boundary Map in about 91° 18′. The difference between the two extremes would not in that latitude exceed 12 miles.—G. E. L.]

This arrangement continued in force until the award was made. Since the making of the award this Government has refrained from making any grants of land in the disputed territory. It is said that the Dominion has taken a different course, and has made grants, or promises of grants, on which parties have acted. This Government has repeatedly and courteously, but vainly, asked the Federal Government for information, and there seems no conceivable reason for not giving it, unless such grants or promises have been made and there is a desire to keep back the facts as long as possible from the Government and people of this Province. The despatches from this Government requesting the information are mentioned hereinafter.

On the 12th of November, 1874, the Government of the Dominion, by Order in Council,* consented to concur in a proposition theretofore made by the Government of Ontario, to determine the northerly and westerly boundaries of the Province by means of a reference to arbitrators. Information was from time to time given to Parliament by the Government of Canada, and to the Ontario Legislature by the Government of the Province, with respect to the progress of the arrangements for this reference. In May, 1878, the Parliament of Canada granted $15,000 to defray the expenses of the Ontario Boundary Commission, meaning thereby the said reference.

From the year 1874 both Governments occupied themselves in making an exhaustive collection of all the documents, facts and evidence bearing upon the controversy, including all that had been relied on upon either side in past discussions. All were printed for the purpose of the arbitration, and in a form which facilitated to the greatest practicable degree the full and prompt examination of the questions at issue.† Cases also were prepared on both sides, containing a summary of the respective claims and the reasons therefor; and these cases likewise were printed.

On the 31st July, 1878, formal Orders in Council‡ were passed, embodying and giving effect to arrangements theretofore made in regard to the arbitration. By an Order of the Privy Council, approved by His Excellency the Governor-General on the said day, after reciting in effect that under previous Orders in Council the subject of the northern and western boundaries of the Province of Ontario had been referred to the Hon. Wm. B. Richards, then Chief Justice of Ontario, and named as referee on behalf of that Province; that that gentleman having subsequently resigned as arbitrator, the Hon. R. A. Harrison, who had been appointed by His Excellency the Governor-General to succeed him in the Chief Justiceship, was appointed by this Government as arbitrator in his place; that Sir Francis Hincks had been named on behalf of the Dominion as another arbitrator; and that subsequently to the action taken under Order in Council of 12th November, 1874, it had been mutually agreed between the two Governments of the Dominion and Ontario that the Right Honourable Sir Edward Thornton, Her Majesty's Ambassador at Washington, should be selected as third referee; such selection was by this Order of the 31st July, 1878, confirmed; and it was declared that the determination of the three referees should be final and conclusive upon the limits to be and taken as and for each boundary respectively. An Order in Council of the same date, and to the same effect, was passed in this Province and approved of by His Honour the Lieutenant-Governor of the Province.

Counsel for the two Governments having been heard by the arbitrators, the arbitrators, on the 3rd August, 1878, delivered their award,§ wherein they determined and decided what "are and shall be the northerly and westerly boundaries" of the Province.

The award so made negatived the claim of the Federal Government to confine our westerly boundary to the meridian of the junction of the Ohio and Mississippi, and our northerly boundary to the Height of Land already mentioned; but the award confined the westerly and northerly parts of the Province to limits narrower than had theretofore

* [Printed p. 247, *ante*.]

† See Book of Arbitration Documents, pp. 1–448; Report of Boundary Commission, Jour. House of Commons, Canada, 1880, pp. 237–301.

‡ Sessional Papers, Ontario, 1879, No. 42. [These Orders are printed *ante*, p. 266.]

§ Report of Boundary Committee, House of Commons, Can., 1880, p. 480. [The arguments of counsel are printed at p. 304, *ante*, and the award of the arbitrators at p. 370, *ante*.]

been claimed for them, determining the same to be in effect as follows: Our westerly boundary was declared to extend to the most north-westerly angle of the Lake of the Woods; and our northerly boundary was declared to be a line therein described, and extending from a specified point on the southern shore of James' Bay to Albany River; thence up the middle of Albany River and of the lakes thereon; thence to English River; and through that middle of that river to a point where the line would be intersected by a true meridian line drawn northerly from the most north-westerly angle of the Lake of the Woods. The most north-westerly angle of this lake is in longitude 95° 14′ 38″ W.

That the territory of Ontario *on the west* extended at least as far as the award thus assigned to the Province, was demonstrated by a mass of evidence which there appears no danger of ever seeing overcome. The only point upon which there could be a reasonable doubt was, whether our true boundary was not still farther west; and if so, how much farther west. The reason of the doubt may be shortly explained.

By the Act of 1774 (14 Geo. III, c. 83, and commonly called the Quebec Act)—as interpreted by its history and known objects, by the surrounding circumstances, by the Royal Commissions issued thereunder shortly afterwards, and by the contemporaneous official and unofficial expositions of the Act—the Province was to extend, on the west, to the banks of the Mississippi River "to its source."* Subsequently, viz., in 1783, the southerly part of this territory was ceded to the United States, that is, to a line through the middle of Lakes Ontario, Erie and Huron; thence through Lake Superior, Long Lake, and the Lake of the Woods, to the "most north-western point thereof; and from thence on a due west course to the River Mississippi."† The arbitrators having given to Ontario a boundary no farther west than "the most north-western point of the Lake of the Woods," the boundary so given is clearly not beyond the true limit. But the line was to go from that point "on a due west course to the River Mississippi." There is no river now called the Mississippi which this due west line would intersect; but there are tributaries west of Manitoba which such a line would touch, the first of them being the White Earth River, the waters of which flow into the River Missouri, a branch of the Mississippi. The White Earth River, or some other stream falling into the Missouri, and thence into the Mississippi, might very well have been held to be the Mississippi referred to in the Act of 1774, in the Treaty of 1783, and in the Royal Commission issued afterwards (22nd April, 1786,) to Sir Guy Carleton as Governor-General. But, as between Great Britain and the United States, by the joint effect of the subsequent treaties of 1794, 1814, 1818 and 1842,‡ the source of the Mississippi was in effect taken to be, as between the United States and the British possessions, in Turtle Lake, at a point south of the most north-western point of the Lake of the Woods and in nearly the same longitude; and it was agreed that the boundary (in that direction) between the United States and the British possessions should be a line drawn due south from this point to the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. Manitoba, lying east of the White Earth River, was set apart by the Federal Parliament as a separate Province, without protest from the then Government or Legislature of Ontario. The Arbitrators have confined the western boundary of Ontario to the meridian of the north-western point of the Lake of the Woods; thus deciding in favour of a westerly line the least favourable to Ontario that on the facts and evidence was possible.

With respect to the *northern* side of the Province, the claim of Canada up to 1870 had been that, either our only limit north was "a few isolated posts on the shore of Hudson's Bay," or that "Canada has no particular limit in that direction," and extends to the Arctic Ocean.§ But writers on the subject have always felt more or less difficulty in saying where exactly, to the north of the Height of Land, the true northerly boundary could be said to be, there being less that is definite to determine it than in the case of

*Book Arb. Docs., 3, 18, 27, 43–56, 135–140, 235–278, 299, 322, 323, 376, 384, 388–391, 402, 409–419, etc.

†Book Arb. Docs., p. 19.

‡*Ibid.*, pp. 20, 21.

§ Sess. Papers, Can., 1857, Vol. 15, No. 17.

the western boundary up to the limit assigned to us there by the award. The question as to the northern boundary is of less consequence to either party than the question of the western boundary, the territory on the north being of considerably less value than the territory on the west; and the Government of Ontario had, in 1872 (19th April),* intimated that they would consider any proposal which might be made by the Federal Government for the establishment of a conventional line to the north, provided that the latter would agree to its being somewhere north of the watershed of the St. Lawrence system. In assigning to the Province the territory as far as James' Bay, the Arbitrators followed the Act of 1791, the Order in Council and Proclamation of the same year, and several Royal Commissions; and if the claim, made by Canada on our behalf and its own before 1870, and by Ontario for itself afterwards, to the whole region of Hudson's Bay, was too extensive, and if there is any ground for maintaining a less favourable limit to the Province on the east side of the northerly boundary than the Arbitrators awarded, there is strong reason for maintaining a much more favourable limit on the western side of the same boundary assigned to us—a limit which would include within Ontario a larger though less conveniently shaped area of territory on the north than has been assigned to us by the award.

Under all the circumstances, Ontario accepted the award, not because it assigned to the Province all that was claimed on its behalf, or all that the Province might within its strict legal rights have had awarded to it, but because the tribunal appointed jointly by the two Governments to decide the matter was one to whose competency and character no one could take exception; and because, according to the judgment of the people of Ontario, neither party to the arbitration could, consistently with good faith, refuse to abide by the decision.

A technical objection has been made to the award, by some of its Federal assailants, that, instead of finding "the true boundaries," the Arbitrators had declared a "conventional or convenient boundary." Sir Francis Hincks, in a lecture on the arbitration, delivered by him by request on the 6th May, 1881, shewed how unfounded in fact this objection is:—

"The duty of the Arbitrators was to find the true boundaries of Ontario, and they are charged with declaring 'a mere conventional or convenient boundary.' Now, for my present purpose, I shall refer merely to those pretensions which specially engaged the consideration of the Arbitrators as affecting the south-western boundary. On the claim under the Proclamation of 1791, which the Arbitrators held to be valid, notwithstanding the able arguments of counsel, of the Hon. Mr. Mills and others, including the Messrs. Dawson, one of whom, the Chairman of the Committee of 1880, fixed the boundary at the White Earth River, 450 miles west of the Lake of the Woods, they concurred in the judgment of the Quebec Court in 1818 that no territory could be awarded to Ontario that was not comprised in the old Province of Quebec as created by the Act of 1774, modified by the Treaty of 1783 with the United States, and by subsequent treaties. They entirely rejected the Dominion claim to a boundary on what is known as the due north line, and having no doubt whatever that the Mississippi River was the western boundary of the old Province of Quebec by the Act of 1774, and that by the Treaty of 1783 the south-western boundary must be either at the international boundary at the north-western angle of the Lake of the Woods, or still farther west, they decided in favour of that boundary which they were clearly of opinion Ontario was entitled to. On the north-east they were clearly of opinion that the Height of Land boundary could not be sustained, and that the true point of departure was the point on James' Bay due north from the head of Lake Temiscamingue.

"The sole ground for the charge that they adopted a conventional or convenient boundary is, that the line connecting the north-eastern and south-western boundaries was adopted for the sake of convenience. The Arbitrators were guided in their decision solely by Acts of Parliament, Proclamations authorized by Orders in Council on the authority of Acts of Parliament, and international Treaties. They found in the Proclamation of

*Sess. Papers, Ont., 1873, No. 44, p. 18; Book Arb. Docs., p. 343. [See the Order in Council and despatch of that date, *ante*, pp. 229, 230.]

1791, that after reaching James' Bay, the description proceeded thus: 'including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.' If the critics of the award believe such language susceptible of the construction that it lays down a precise spot on the north-west as a boundary, then their charge might have some foundation; but the fact is that the language would have justified the Arbitrators in extending the boundaries of Ontario very considerably. They were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior, after their decision as to the south-westerly and north-easterly boundaries became known, to connect the two points by a natural boundary, and being aware of the fact that the Albany River had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they adopted it. It is not a little singular that the award was promptly accepted by Ontario, although the only questions of doubt were decided in favour of the Dominion. Both on the west and north the doubts were whether Ontario should not have had more territory. * * *

"The objection made to the award of the Arbitrators is, that they did not find the true boundaries, but adopted a convenient boundary. I need not repeat my refutation of this allegation; but even on the assumption that it had any force, it would not apply to the western boundary, regarding which the Arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods was the true point of departure. The northern boundary, owing to the vagueness of the language employed in the Proclamation issued under the Act of 1791, is more open to doubt. * * * The western boundary is not only the most important, but the least open to doubt, as I think I have already clearly demonstrated. I will only add, in conclusion, that the Arbitrators were of opinion that, having reference to all the facts of the case, the boundaries set forth in the award were supported to a larger extent than any other line by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal."

In a despatch dated 31st December, 1878, from this Government to the Secretary of State for Canada, it was stated that during the approaching session of the Legislature a measure would be introduced "to give effect, by way of declaratory enactment or otherwise, to the award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario;" * and His Honour, in the same despatch, also stated that he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at Ottawa in the next session of the Parliament of Canada. By this despatch, the Government of Canada was respectfully reminded that the territory which was in dispute before the award was made extends on the westerly side of Ontario from a line drawn due north from the confluence of the Ohio and Mississippi, to (say) the Rocky Mountains, and extends on the northerly side from (say) the Height of Land to the most northerly limit of Canada; that the award assigned part of this territory to the Dominion and part to Ontario; that the administration of justice would continue to be surrounded with difficulties and uncertainties, especially in the matter of jurisdiction, until the award should be confirmed by express legislation at Ottawa and here; that the subject assumed unusual importance in view of the construction of public works within the territory, and the consequent influx of an unsettled and migratory population; that His Honour the Lieutenant-Governor would be glad to learn that such legislation as would be necessary to give effect to the award would be had at Ottawa at the next session of the Parliament of Canada; and that the legislation should, it was respectfully submitted, be as nearly as possible simultaneous and identical. The despatch further stated that His Honour the Lieutenant-Governor would be glad to receive and consider any suggestions in connection with this object; and also to receive, as soon as possible, the maps, field notes, etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion.

In a despatch, dated 8th January, 1879, the Government of Canada acknowledged the receipt of the despatch last mentioned, and stated that the same would not fail to

* Sessional Papers, Ontario, 1879, Vol. 11, No. 80. [The despatch is printed *ante*, p. 371.]

receive all due consideration. No intimation was given, in reply to His Honour's communication, that the Government of Canada would refuse to be bound by the award of the Arbitrators, or would not submit to the Parliament of Canada a measure recognizing the same or giving effect thereto;* nor did this Government receive the maps, field notes, etc., or any communication with respect to the request made therefor.

The Legislature of Ontario, by an Act of the Session of 1879,† consented that the boundaries of the Province, as determined by the said award, should be declared to be the northerly and westerly boundaries of the Province of Ontario.

By a further Act of the same session‡ the Legislature made provision for the administration of justice in the northerly and westerly parts of Ontario. This Act was the subject of subsequent correspondence between the two Governments, hereinafter set forth. The Ontario Legislature was prorogued on the 11th March; the Federal Parliament remained in session until the 15th May.

From the newspaper report of the proceedings of the House of Commons of 2nd May, 1879, it was found to have been stated in the House, on behalf of the Government of Canada, that the papers on the subject of the arbitration and award had been mislaid. No communication to this effect had been made to the Government of Ontario, nor any application for fresh copies; but in order that no time should be lost in introducing the legislation necessary to set at rest the question of the boundaries, this Government forwarded to the Secretary of State, at Ottawa, other copies of all the papers so stated to have been mislaid. Copies of such of them as were in print were forwarded also to every member of the Dominion Government personally.§ A despatch was on the same day sent to the Secretary of State, referring to these documents. No action, however, during the said session, was taken by the Government or Parliament of Canada with respect to the boundaries.‖

On the 23rd of September, 1879, a further despatch was addressed by this Government to the said Secretary of State,** calling the attention of the Government of Canada to the despatch of 31st December previous, respecting the legislation needed to put beyond dispute, in civil and criminal cases, any question as to the western and northern limits of Ontario; pointing out that, an award having been made in pursuance of a reference by the two Governments, it was just that there should be no further delay in in formally recognizing the award as having definitely settled the matters submitted to the Arbitrators; that the Government of Ontario did not doubt that the Government and Parliament of Canada would ultimately take the same view, but it was respectfully represented that the delay in announcing the acquiescence of the Dominion authorities, and in giving full effect otherwise to the award, had been embarrassing and injurious.

The despatch stated some of the leading evidences of the right of the Province to the territory awarded, but it was observed that "if it were less clear than it is, that the award does not give to Ontario more territory than the Province was entitled to, and if the reasons which justify the conclusions of the Arbitrators were far less strong and clear than they are, it is respectfully submitted that the award demands the active acquiescence and recognition of the parties to the reference. The question of boundaries was in controversy; it was referred by mutual consent to the distinguished gentlemen named; they have made their award, and the fact is conclusive in regard to all questions on the subject."

---

*Sessional Papers, Ontario, 1879, Vol. 11, No. 80. [The letter of acknowledgement is printed *ante*, p. 371. On the 9th March, 1879, the subject was referred to in the House of Commons:

"Mr. MILLS enquired whether the Government purposed, this session, to introduce a Bill to confirm the boundary between the Province of Ontario and the Territories of Canada as declared in the award of the arbitrators; and if not, why not?

"SIR JOHN A. MACDONALD: All the papers on this important subject are now in the hands of a member of the Government, and the matter is under serious consideration." (Debates, Ho. of Coms., 1879, p. 157.)—G. E. L.]

† 42 Vic., chap. 2, (Ontario.) ‡ *Ib.*, chap. 19.

§ Sessional Papers, Ontario, 1880, No. 46. [See the letter of 2nd May, 1879, p. 373, *ante*.]

‖ [In the House of Commons, on 14th May, 1879, "Mr. MACKENZIE asked if the Government had decided not to introduce an Act to confirm the Ontario Boundary Award this session?

"SIR JOHN A. MACDONALD: Yes." (Debates, Ho. of Coms., 1879, p. 2011.)—G. E. L.]

** Sessional Papers, Ontario, 1880, No. 46. [Printed *ante*, p. 373.]

The Government of Canada was reminded that the settlement of the controversy, as well as the explorations for railway and other purposes, had drawn public attention to the territory north and west of Lake Superior; that settlement therein was proceeding; that various enterprises were establishing themselves; that speculation was likely to be directed to this region; and that various causes were at work favourable to an influx of population, both of a settled and floating character; that in view of these considerations, the Government of Ontario trusted that the Government of Canada would recognize the propriety of announcing without further delay their intention to submit to Parliament, next session, a Bill declaring the boundary established by the Arbitrators to be the true northerly and westerly boundaries of Ontario, and to use the influence of the Government to have the measure accepted by both Houses, and assented to by His Excellency the Governor-General. The request contained in a former despatch was renewed, "that the Government of Canada would be pleased at once to forward to this Government the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion."

On the 25th September, 1879, the Under-Secretary of State acknowledged the receipt of this despatch, and stated that the subject would be submitted to His Excellency the Governor-General.* But from that day to this no intimation has been communicated to this Government that the subject had been submitted to His Excellency as then intended, or what the result was of its being submitted; nor has any answer whatever been made to any of the statements of the despatch. The maps, field notes, etc., again asked for, were not sent; nor was any explanation given or reason suggested for not sending them.

On the 14th February, 1880,† the Under-Secretary of State for Canada transmitted to this Government a copy of an Order of His Excellency the Governor-General in Council, 12th February, 1880, on the subject of the Act passed by the Legislature of this Province, at its previous session, providing for the administration of justice in the northerly and westerly parts of the Province. The Council concurred in an opinion which had been reported by the Minister of Justice, that the Act *seemed* "to encroach upon the powers of the Dominion Government with respect to the appointment of judges," and to go "far beyond any previous Act of a similar character, and should be disallowed, unless repealed within the time for disallowance." On the 17th February, a copy of the report of the Minister of Justice, on which the said Order in Council had proceeded, was transmitted to this Government.

Five days after this Order in Council, viz., on the 19th of February, 1880,‡ a strongly hostile Committee was appointed by the House of Commons, with the approval of the Federal Government, for the professed object of "enquiring into and reporting to the House upon all matters connected with the boundaries between the Province of Ontario, and the unorganized territories of the Dominion, with power to send for persons and papers."§ The Committee made a report to the House on the 5th May following. The evidence taken by the Committee consisted chiefly of the documents, papers, and proofs which had been before the Arbitrators, with a few further documents of no substantial value as additional evidence, and a mass of *ex parte* statements not under oath, most of which would be inadmissible before any court of justice, and all would be treated as immaterial if admitted. It may be observed here that Mr. Justice Armour, who before his elevation to the Bench had been counsel for the Dominion in the matter of the boundary, was questioned by the Committee as to his personal view regarding the boundary established by the Act of 1774, and gave his opinion against the westerly line now contended for the Dominion.‖ The Committee, by a party vote, expressed the opinion that the award did not describe the true boundaries of Ontario, and that it included within this Province territory to which the Committee asserted that the Province was not entitled.¶

* Sessional Papers, Ontario, 1880, No. 46. [Printed *ante*, p. 377.]

† Sessional Papers, Ontario, 1881, No. 30, p. 9. [Printed *ante*, p. 384.]

‡ Journal, House of Commons, 1880, p. 36; Debates, 1880, pp. 59, 76, 80, 101.

§ Journals, House of Commons, Appendix, 1880, No. 1.

‖ Report of the Boundary Commission, House of Commons, Canada, 1880, p. 140.

¶ *Ibid.*, p. xxvi.

The Governments of Canada, up to 1870, had thought, and, so far as known, invariably asserted, otherwise.

This Government took no part, directly or indirectly, in the proceedings before this Committee, nor were they invited to do so.

Meanwhile, on the 3rd March, 1880, the Legislative Assembly of this Province, by a majority of sixty-four to one, passed resolutions, in part to the following effect:

"That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the Arbitrators, the Government of Canada has hitherto failed to recognize the validity of the said award, and that no legislation has been submitted to Parliament by the Government of Canada, for the purpose of confirming the said award."

"That, nevertheless, it is, in the opinion of this House, the duty of the Government of Ontario to take such steps as may be necessary to provide for the due administration of justice in the northerly and westerly parts of Ontario, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of Ontario, that the rights of this Province, as determined and declared by the award of the Arbitrators appointed by the concurrent agreement and action of the Governments of Canada and Ontario, should be firmly maintained."

"That this House will at all times give its cordial support to the assertion by the Government of Ontario of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the Arbitrators, by which the northerly and westerly boundaries of this Province have been determined."

The Session of the Ontario Legislature being then near its close, and the proceedings of the Federal Government affording reason to apprehend that the Provincial Act of the previous session, making provision for the administration of justice in the northerly and westerly parts of Ontario, might be disallowed, it was necessary that such provision should be made for the administration of justice in the remote territories of the Province as, under the circumstances, might be practicable—the same to take effect in the event of the former Act being disallowed. Accordingly, the Legislature passed a new Act* (5th March, 1880), entitled "An Act respecting the Administration of Justice in the Districts of Algoma, Thunder Bay and Nipissing." By this Act two additional stipendiary magistrates, appointed under the former Act for the Districts of Thunder Bay and Nipissing, were continued; their jurisdiction, as regards subject matter and amount, was confined to the limits provided for by the law which was in force in Upper Canada before Confederation; and, to guard against any pretext for the disallowance of the Act, the Act avoided any disputable reference to the extent of the territory within which the Act was to operate, leaving that question to be determined as might be by the Law and the Right. This Act has not been disallowed.

With reference to the former Act on the same subject, which the Dominion Government had intimated an intention to disallow, the undersigned, on the 15th March, 1880, had the honour to submit a report,† which was approved of by your Honour in Council on that day. In this report the undersigned took occasion to observe that it was a matter of profound disappointment that, after the exhaustive investigation which the question of our northerly and westerly boundaries had received, and the unanimous decision, eighteen months before, by the distinguished and able gentlemen selected as Arbitrators, the Government of the Dominion was not yet prepared to abide by the award, or to recognize the just rights of the Province which the award established.

The report further showed, that the Act which that Government proposed to disallow was not objectionable on any of the grounds urged against it; and that the disallowance was not necessary, and would not, under all the circumstances, be a proper exercise of Dominion authority. The report stated, that the despatch had been received when the recent Session of the Legislature was far advanced; that it appeared necessary, therefore,

* Journals of the Legislative Assembly of Ontario, 1880, pp. 131, 141, 165. 43 Vic., c. 12, Ont.

† Sessional Papers, Ontario, 1881, No. 30, p. 11. [Printed *ante*, p. 388.]

to provide at once for the contingency of the disallowance, it being assumed that the Dominion Government, in common with the Province, felt and would recognize the propriety of some provision being made for the administration of justice in the still disputed territory, instead of its being left to utter lawlessness and anarchy; that a new Act had accordingly been passed, which was not to go into effect unless and until the former Act should be disallowed; that the new Act confined the jurisdiction of the stipendiary magistrates, as regards subject matter and amount, to the limits provided for by the law in force before Confederation (the extension of their jurisdiction in these respects having been one of the objections made to the former Act), and that the new Act had avoided any disputable reference to the extent of the territory within which the Act was to operate, leaving that question to be determined as might be by the Law and the Right. The report contained the following further observations:—

"As the territory in dispute is included in the territory which the Province of Canada, before Confederation, claimed as part of Canada, and therefore of Canada West, or Upper Canada; and in the territory to which the Dominion, through its ministers, after Confederation, and until the purchase from the Hudson's Bay Company, made the same claim, and on the same grounds; and which territory the Province of Ontario continued afterwards to claim; and as the territory, still it seems in dispute, was, eighteen months ago, solemnly awarded to the Province as its rightful property, by the unanimous decision of three Arbitrators of the highest character and competency, who had been mutually chosen by the two Governments—it is obvious that the *prima facie* right to the territory, if not (as we insist) the certain and absolute right, is, and must be taken to be, in Ontario; and it is the consequent obvious duty of the Province to make such reasonable provision as may be practicable for the administration of justice among the population of the territory. The dispute or delay on the part of the Dominion with respect to the award causes uncertainty, and its daily increasing and grave evils, in connection with the administration of justice; and if the dispute or delay is to continue, the undersigned is respectfully of opinion that the evils referred to, which all must regret, will be intensified by the disallowance of the provisional legislation, and that their removal, or partial removal, calls rather for provisional legislation by the Dominion (without prejudice to the matter in dispute), expressly giving to the laws of Ontario, and its officers, authority in the territory, pending the dispute by the Dominion, or pending the settlement and recognition of the true boundaries." *

A copy of the report, and of the Order in Council concurring therein, was transmitted by your Honour to the Secretary of State at Ottawa, on the 15th March, 1880.

On the 17th of the same month, † the Federal Minister of Justice made his further report, admitting, in view of the observations of the undersigned, that part of the former Act was not open to the objections which the Minister had previously urged against it, but affirming that the objections to other portions, which referred to the stipendiary magistrates and to the Courts presided over by them, still remained; and he advised the disallowance of the Act. The Minister, in this report, observed that it was unnecessary to reply to the arguments adduced by the undersigned with respect to the boundaries of Ontario, as any discussion of this kind would, he observed, seem to be inopportune. The Government of Canada has not hitherto found any occasion when such a discussion with this Government did not seem to be inopportune. On the 22nd March, 1880, the Act in question was disallowed.

On the 19th of April, 1880, the Committee of the House of Commons not having yet made any report, an Order was passed by His Excellency the Governor-General in Council,‡ under the authority of the Act of the Dominion Parliament, 39 Vic., c. 21, by which Order it was declared that a certain building in or near Rat Portage was in the District of Keewatin, and the Order purported to establish and declare this building to be a common gaol for the District of Keewatin, and authorized and empowered the

* Sessional Papers, Ontario, 1881, No. 30, p. 10.

† Sessional Papers, Ontario, 1881, No. 30, p. 15. [Printed *ante*, p. 392.]

‡ Prefixed to the Dominion Statutes, 1880, p. lxxxii.

Commissioner of Police for the District of Keewatin to appoint a gaoler, or keeper, of the gaol, and such other officials for the purposes thereof as might be thought necessary. This building is within the territory awarded to this Province. The Government of the Dominion, however, by the Order in Council referred to, chose to assume that the territory in question was not within Ontario, and provided for the administration in the said territory of other laws—namely, the laws of the District of Keewatin. No communication of this Order in Council was made to this Government.

On the 28th May, 1880, an Order in Council, approved by His Honour the Lieutenant-Governor, was passed, providing that that part of the Territorial District of Thunder Bay west of the meridian of the most easterly point of Hunter's Island, formerly known as the provisional boundary line, should be divided into two Division Court divisions, therein described; the object of the said Order being, that one Division Court should be held at Rat Portage, and the other at Fort Frances, in the territory in question. The population of Rat Portage is said to number about 700, about half of that number being residents of the locality. The establishment of a Court there by this Province had been applied for by the inhabitants.

During the Session of the Federal Parliament, in 1880, the undersigned endeavoured to induce the Dominion Government to concur in some steps for the due administration of justice in the disputed territory; and, as that Government was not yet prepared to concede our right to the territory, the undersigned transmitted to the Minister of Justice, the draft of a Bill, embodying certain provisions, which it seemed necessary or desirable that the Parliament of Canada should pass for the government of the territory in the meantime. In these endeavours the undersigned was only partially successful. Thus in a communication addressed 23rd April, 1880,* to the Minister of Justice, the undersigned pointed out that the Supreme Court had decided that the Parliament of the Dominion had power to pass a prohibitory liquor law; that it was of special importance that no intoxicating liquors should be sold along the line of the Pacific Railway; that the claim of the Federal Government to the territory up to the meridian of the confluence of the Ohio and Mississippi, implied a claim that the Keewatin law as to intoxicants extends to that meridian; but as, by the decision of the Supreme Court, the Federal Parliament had power to make that law (or a similar law) applicable, whether the claim of the Dominion to the territory was well founded or not, the undersigned suggested an enactment declaring in express terms that the Act, or such modification of it as the Minister might prefer, should have effect whether the territory was within Ontario or Keewatin. The communication proceeded as follows:—"If you do not consider it advisable that a prohibitory law should be in force so far east, then, to avoid clashing, I suggest that Parliament confer on the License Commissioners of Ontario for Thunder Bay the right to issue licenses in so much of the disputed territory as is not to be covered by the prohibition.

"In regard to civil matters, to assume or declare that the Keewatin law as to civic procedure shall be in force in any part of the disputed territory would put it in the power of any suitor to raise the boundary question; as, if our claim of boundary is correct, such an enactment would be *ultra vires*. I think, therefore, that for the determination of Civil rights, you will find it the convenient, and indeed only practicable course, to confirm, in reference to the disputed territory, the jurisdiction of our stipendiary magistrate,† and to provide that matters beyond his jurisdiction shall be determined in the District Court of Algoma, where the cause of action is within the jurisdiction of that Court.‡ Where the matter is beyond the jurisdiction of the District Court of Algoma, authority to try in any Superior Court of Ontario, and in any county, should be given."

None of these suggestions were acted upon; nor was any communication made to the undersigned or to the Government of Ontario with respect to them. An Act was passed by the Federal Parliament (7th May, 1880),§ making some provision with respect

* Sessional Papers, Ontario, 1881, No. 30, p. 17. [Printed *ante*, p. 396.]

† See 43 Vic., cap. 12, sec. 3.

‡ *Ib.*, sec. 5.

§ 43 Vic., ch. 36, Dom., p. 253. [Printed *ante*, p. 400.]

to the administration of justice in criminal cases in the disputed territory, but making no provision in regard to civil matters, or to the other important subjects mentioned; nor has any provision in respect of them been made since; nor has any proposition been made to this Government for concurrent or other legislation of any kind, with a view to meeting any of the necessities of the case.

In your Honour's Speech at the opening of the session of the Provincial Legislature on the 13th January, 1881,* your Honour was pleased to observe, that it was much to be regretted that the Dominion Government had taken no step to obtain, and had hitherto shown no intention of seeking to obtain, from the Parliament of Canada, legislation confirming the award, though made two years before by three most distinguished Arbitrators chosen by the two Governments, and who had before them all the evidence obtainable from the most diligent researches both in America and Europe, or brought to light during the many discussions bearing on the subject which had taken place during the last century. Your Honour was pleased further to say, that the result of the inaction of the Dominion Government in this respect was to defer the settlement and organization of a large extent of country; to deprive the inhabitants of that district of those safeguards of peace and order which they, in common with all others, are entitled to enjoy; and to withhold from the people of Ontario the benefits which the possession of that territory would afford.

The House of Assembly, in their Address † in answer to your Honour's Speech, expressed their concurrence in what had thus been said by your Honour.

On the 1st February, 1881, the undersigned addressed to the Minister of Justice a communication ‡ expressing his hope that the then session of the Dominion Parliament would not be allowed to come to an end without the necessary Act being passed adopting and confirming the boundary award; that if in this we were again to be disappointed, some additional legislation was absolutely required to mitigate the serious evils consequent upon the unhappy position in which the territory in question was placed; that no magistrate or justice of the peace acting in the disputed territory could feel any assurance that his jurisdiction would not be disputed, and his officers set at defiance or sued in trespass; that the doubts which the inhabitants must have as to their position, in view of the delay of the Dominion Parliament to confirm the award, necessarily paralyzed the administration of justice in the territory; that the Dominion Act of the previous session (43 Vic., cap. 36) did not declare what law should govern in the case of civil rights, and made no provision as to the trial of civil matters: nor did it set at rest the very important question as to whether the License Law of Ontario, or the Prohibitory Law of Keewatin, governs in this territory; that in the letter of the undersigned of the 23rd April previous, he had suggested that Parliament should be requested to make some provision in respect of these matters; that he had also suggested that authority should be given alike to the justices of the peace of Keewatin and of Thunder Bay and Algoma to act in any part of the disputed territory; and that the jurisdiction of the District Court of the District of Algoma, and of the Divisional Courts established for Thunder Bay, and of the judges and officers of such courts, including the sheriff of Thunder Bay, should have authority and jurisdiction within this territory; that the Draft Bill which the undersigned had submitted during the previous session, under the hope that the Minister would introduce it into Parliament, dealt with these matters; that they seemed to the undersigned far more important for the due administration of justice than those provisions of the Draft Bill which the Act, as passed, had included; that, in fact, the provisions of the Act, as passed, to be operative to any great extent, required the aid of some of the omitted provisions; that the undersigned did not see what valid objection could be urged against the introduction of the omitted provisions; that the fact of reciprocal rights being given to the officers of Keewatin and of Ontario would clearly show that the Parliament of Canada were not by this legislation admitting the right of Ontario; and that, on account of the omission of the provision (which the undersigned had suggested) giving to the sheriff of Thunder Bay authority in this territory, it had been found necessary at very heavy expense to bring the prisoner Horn, who was accused of murder, down to Sault

* Journals, Legislative Assembly, Ontario, 1881, p. 2. [Printed *ante*, p. 403.] † *Ib.*, p. 9. [Printed *ante*, p. 403.]

Ste. Marie for trial. The undersigned reminded the Minister of Justice that the Act of the previous session would expire upon the rising of Parliament.

The undersigned expressed his trust also, that authority would be given to the Ontario Government to deal with the land and timber in the disputed territory, subject to our accounting therefor in case our right to the territory should not be maintained. He pointed out that, though the Parliament of Canada had not yet recognized the award, yet the award certainly gave to Ontario, meantime, such a *prima facie* interest as made it most reasonable that the Province should have the necessary means of giving titles to settlers within the territory, so long as what might be deemed the possible rights of the Dominion were duly protected.

The Minister of Justice replied on the 7th February, 1881, acknowledging the receipt of the communication and accompanying papers, and stating that the same would receive his best consideration. But no further communication whatever was made to the undersigned, or to the Provincial Government, on the subjects referred to, and nothing was done to remove or alleviate any of the clamant evils which the undersigned had pointed out. Nor did the Federal Government submit to Parliament during this session any measure recognizing or giving effect to the award.

On the 3rd March, 1881, the Legislative Assembly of the Province passed resolutions, by a majority of 75 to 1,* declaring (amongst other things) as follows:

"That this House deeply regrets that, notwithstanding the unanimous award made on the 3rd August, 1878, by the Arbitrators appointed by the joint and concurrent action of the Government of Canada and the Government of Ontario to determine the northerly and westerly boundaries of Ontario, no legislation had been submitted by the Government of Canada to the Dominion Parliament for the purpose of confirming that award; nor has the validity of the award yet been recognized by the Government of Canada.

"That the omission of the Government and Parliament of Canada to confirm the award is attended with grave inconvenience, has the effect of retarding settlement and municipal organization, embarrasses the administration of the laws, and interferes with the preservation of the peace, the maintenance of order, and the establishment of good government in the northerly and north-westerly parts of the Province of Ontario.

"That it is the duty of the Government of Ontario to assert and maintain the just claims and rights of the Province of Ontario, as determined by the award of the Arbitrators; and this House hereby re-affirms its determination to give its cordial support to the Government of Ontario in any steps it may be necessary to take to sustain the award, and to assert and maintain the just claims and rights of the Province as thereby declared and determined."

On the 4th March, 1881, the Provincial Legislature was prorogued; and immediately afterwards, viz., on the 7th March, a Bill was introduced into the Senate by the Federal Government providing for the extension of the boundaries of Manitoba, in a way which further complicated the difficulties connected with the administration of justice in the territory, and with the settlement of its lands, and the development of its resources. This Bill was put through its several stages in great haste, and was passed (by the Senate) on the 11th March.†

Meanwhile, the stipendiary magistrate of this Province appointed to the said territory reported, 23rd February, 1881 (received at Toronto 5th March), that the explorers and miners on the Lake of the Woods were thrown into a state of despondency from the apprehension that the boundary question would not be settled at this session of Parliament. The communication proceeded to state further, as follows:—

"You can have but little conception of the difficulties and disappointment those people have met with here. They have expended all their money in exploring and in surveys, expecting an early return for their investment and toil, which they felt sure they would if the boundary question was settled, so that deeds could be procured for their locations. Without a title nothing can be done with mining capitalists, who require to have an undisputed title to the lands in which they risk their money.

* Journals, Legislative Assembly, Ontario, 1881, p. 150. [Printed *ante*, p. 406.]

† Journals of Senate of Canada, pp. 195, 212, 215.

"The delay of another year in settling the question of the boundary will ruin many, and they will be driven from the locality never to return, causing loss to the merchants and others who have made advances with a fair prospect of an early return. The people of the locality are suffering in many ways from the unsettled condition of affairs. There is no civil court to collect debts, no land agent to locate settlers, no registry office to record deeds, no timber agent to protect the forest. There are timber locations to be had, but there is no security for the expense of exploring and surveying them. All is uncertainty and confusion. The mineral lands will be so mixed up before long, that the men who own locations will not be able to recognize their own property. Some places have been surveyed several times, and the surveys cover each other, and there is no doubt but there will be fighting, and perhaps murder, over those claims. Some persons are armed now to defend their rights against wealthier claimants.

"The water privileges here are of great value. There are several places near this place where the water can be let out of the Lake of the Woods with but little expense, and a fall of from sixteen to eighteen feet secured without any expense for a dam. There is scarcely any limit to the propelling power to be had here, and immediately on the line of the Canadian Pacific Railway. Trains can be run to the mill door without leaving the right of way. The privileges are being claimed and applied for by persons, for speculation, who have nothing; and the same confusion is likely to arise here that has taken place in the mines. If unworthy persons get those valuable privileges, who will do nothing with them themselves, and will only sell at exorbitant prices to those who wish to use them, it will be a great injury to the milling prospects here. They should be sold by the Government to persons who would erect mills within a specified time. The wheat crop of the great North-West can be ground at this point in transit to an eastern market, and Rat Portage would soon become a second Minneapolis. Its natural advantages are superior.

"The whiskey sellers are applying their illicit calling with great success, much to the injury of the district."

A copy of the material parts of this important communication was transmitted to the Dominion Government by the Provincial Secretary on the 8th March, 1881, but nothing was done to remove the evils to which the communication called attention, nor has any reference thereto been since made by that Government.

As soon as a copy of the Manitoba Bill had been received, your Honour, by the advice of your Council, addressed a despatch to the Dominion Government, stating that this Government had had their attention called to the Bill; that its terms, so far as regarded the easterly limit of Manitoba, were regarded by this Government with the greatest concern, and were considered as in the highest degree objectionable; that, so far as the territory to be comprised within the limits of the Province of Manitoba was indisputably within the jurisdiction of the Parliament of Canada, your Government rejoiced at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and the North-West Territories the direct benefits of Provincial and Municipal government. Your Honour proceeded to observe as follows:—"But, while the extension of the boundaries in directions as to which there is no dispute is a matter of congratulation, the terms in which the new eastern boundary of the Province is described in the Bill appear to my Government to call for an earnest and vigorous protest on behalf of the Province of Ontario.

"According to the provisions of the Bill, the eastern boundary of Manitoba is to be the western boundary of the Province of Ontario, wherever that boundary may hereafter be determined to be, though a very large part of our territory in that direction is still in dispute on the part of the Government at Ottawa, notwithstanding that more than two years ago it was found and declared to be ours by the unanimous award of the three distinguished gentlemen mutually chosen to determine the question.

"My Government desire to call the attention of the Government of the Dominion once more—(1) to the great and obvious injury occasioned to the interests of Ontario by the refusal or delay of the Dominion Government to recognize and confirm that award; (2) to the inconvenience and embarrassment, in an administrative sense, incidental to

the delay; and (3) to the fact that whilst the Government of the Dominion have failed to procure or propose the legislation necessary to the confirmation of the award, and have treated the rights of Ontario to the boundaries determined by the Arbitrators as being still open to question, they have not been pleased up to this moment to enter into any discussion of the subject with this Government, or even to make any official communication of the grounds on which a recognition of the award by which the matter in question was intended and supposed to be settled has been declined or delayed; and that the only answer which has been hitherto given to the repeated representations made on this subject has been that the communications would receive consideration.

"Under these circumstances, my Government can only regard this new step, of intruding a third party into the existing controversy, as an act of direct antagonism and hostility to the interests and rights of the Province of Ontario.

"Hitherto the assent of the Dominion of Canada to a settlement of the question has been necessary for that purpose, and would be sufficient. The Dominion has no constitutional interest in withholding that assent, and the people of Ontario have a voice in its councils. But, by the measure which has received its first reading in the House of Commons, it is proposed to give to another Province a new, direct, and strong interest adverse to that of the Province of Ontario, and to invite Manitoba, as a contiguous Province, with a growing and active population, to claim jurisdiction over every portion of the territory to which the Dominion of Canada has thought fit to question the right of Ontario.

"The proposed measure would also make the consent of the Province of Manitoba, as well as of the Government at Ottawa, to be hereafter essential to any settlement, or even to any step towards a settlement, of the existing controversy; and would place that Province in such a position, with reference to the territory, as may make almost, if not quite, impossible an amicable settlement of the question, or any settlement founded on the ground of the just obligation which an award made in good faith imposes on Nations, Dominions, or Provinces which, through their representatives, were parties to the arbitration.

"Serious and most vexatious difficulties cannot fail to arise from the conflicting interpretation of their rights in the premises by either of the three authorities claiming jurisdiction within an extended area of territory where it is of the utmost importance to peace and good order that the power of the law should be paramount and beyond question. In this view it has been repeatedly, and hitherto vainly, urged that if our right to the territory is not acknowledged, a provisional arrangement should be made with the sanction of Parliament in regard to the law which is to regulate the rights and obligations of the inhabitants with respect to civil rights and property, and kindred matters, until the question in dispute should be settled. In short, my Government look upon the proposed measure as calculated to aggravate all existing difficulties, and to prove most prejudicial to the harmony and accord which should prevail between the Provinces of the Dominion.

"Under all the circumstances, my Government desires respectfully to urge that, in fair dealing with the Province which they represent, the measure in progress should define the easterly boundary of the Province of Manitoba so as not for the present to extend in an easterly direction beyond the boundary of Ontario as determined by the Arbitrators, leaving the further extension of Manitoba eastward to be provided for by future legislation, should any competent authority decide that Ontario is entitled to less territory than by the award is declared to belong to this Province."

Your Honour further stated that, "The resolutions of the Legislative Assembly, passed by them in the session of 1880, and the resolutions passed in the session which has just terminated, and which received the unanimous support, with an individual exception, of the whole House, were sufficient to show that if the measure should be passed in its present form, it would be deemed by almost the whole people of Ontario as a violation of the rights of the Province, and as an act of gross injustice towards it.

"This Government trusted that, in view of the representations made, the Government of Canada might even yet see fit so to modify the measure then before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages

to the Province of Manitoba, in whose rapid progress and development" your Honour's despatch justly stated that "this Province, as a portion of the Dominion, felt profound satisfaction."

The receipt of this despatch was acknowledged on the 16th of March, 1881, but no answer was given to any of its statements or appeals, and no change was made in the Bill.

The transfer to Manitoba of the disputed territory was not contemplated by the first Act passed by the Manitoba Legislature (40 Vic., cap. 2, sec. 1; Revised Statutes of Manitoba, cap. 2, sec. 2), consenting to an extension of the boundaries of that Province by the Dominion Parliament, the extension thereby agreed to not including any part of the disputed territory. But this (it is presumed) not suiting the policy of the Federal Government, a special session of the Manitoba Legislature was convened, and a new Act obtained (4th of March, 1881), consenting that the new limits should include the whole of the disputed territory. Two reasons were suggested for accepting the territory, but having reference to the whole act it is apparent that neither of these reasons could have much real weight with the people of Manitoba. They are stated in a resolution passed by the Manitoba Assembly in this session :*—

"*Resolved*, That it is desirable that the boundaries of the Province should be extended eastwards, to correspond with the line marked as the west boundary of Ontario, near the eighty-ninth meridian of west longitude; that the requirements of the prairie portions of the Province could be supplied with the timber of the eastern portion; besides which, a port on Lake Superior would thereby be secured to the Province."

Under the Bill as introduced, and afterwards passed, the Crown Lands and Timber were not to belong to the Province of Manitoba. As the Premier explained: "By extending the boundaries of Manitoba, [the Bill] does not affect the proprietorship of the land. The land in the extended boundary belongs to the Dominion. . . We cannot afford to give [the territory] to Ontario, if it belongs to the Dominion, because the lands would belong to Ontario. Keeping it as a portion of Manitoba, the lands belong to the Dominion."† This being so, it is manifest that "the requirements of the prairie portions of the Province" would be supplied with the timber equally well whether the jurisdiction over the territory should belong to one Government or the other.

As for "a port on Lake Superior," all the ports of the Dominion, in whatever Province situate, are open to the people of all the Provinces equally; the people of the Province in which such ports are situated having no advantage over others. It is also to be observed that Manitoba could only have a port on Lake Superior by annexing the territory east and south of the height of land, which was never claimed by the Hudson's Bay Company, and was until after Confederation an acknowledged part of Upper Canada.

That Manitoba could not have desired, and did not desire, the extension of its territory on the easterly side of that Province so as to include what was in dispute, is sufficiently apparent from what has been already said; and there are other facts which show the same thing. Manitoba is a comparatively new Province, having, by the census of the present year, a population of less than 50,000. Before the Act it had an area of 13,969 square miles. The Act gave additional undisputed territory to the extent of about 91,000 square miles. The enormous addition was all that for the present that Province could possibly need. The further addition of about 39,000 square miles of disputed territory, the land and timber of which the Federal authorities reserved to the Dominion, was a mere burden, and was no pecuniary or financial benefit to Manitoba. The whole annual revenue of that Province at this time did not much exceed $100,000; and its necessary annual expenditure was such as to leave no margin for its new territory. On the other hand, Ontario had (its opponents must admit) at least a strong *prima facie* claim to the territory. Up to 1870 (as has already been shown) the Dominion Government itself had insisted on the claim as being clear; and subsequently it had been awarded to us by a competent and impartial tribunal. With respect to the organized part of the territory, the right of Ontario is so strong that (as the undersigned has already stated) the counsel of the Federal Government, Mr. Ramsay, had, in his official report to that

* Quoted in Debates of the House of Commons, 1881, p. 1450.

† Debates of the House of Commons, 1881, pp. 1450, 1456.

Government, pointed out that, though according to his argument the legal view was against us, yet equity and fairness required that Ontario should have the territory "to the height of land which forms the watershed of the water system of the St. Lawrence and the Great Lakes;" that "in creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed; and that it was incontestable that up to 1867 the Government of Canada *de facto* extended to the height of land which forms the watershed of the water system of the St. Lawrence and the Great Lakes." The undersigned has also shown that, up to 1867, this part of the now disputed territory had been invariably dealt with as being an undisputed part of Upper Canada, and that since Confederation it has been dealt with as part of Ontario. If it formed no part of the Province of Upper Canada, or of Ontario, as is now contended, it follows that no man in it has any title to the land which he occupies; that all the acts of the courts and officers herotofore exercising jurisdiction have been illegal; and that all concerned in them are liable to actions for damages; as the Federal Ministers proclaimed in the debate on the Manitoba Bill. If this part of the territory is really in point of law not in Ontario, or if the question is doubtful, the just method of dealing with the subject was for the Federal Parliament to confirm the title of Ontario to this portion, whatever became of the rest, of the disputed territory, and to confirm all grants and governmental acts which want of title would or might otherwise invalidate, to the great injury of the population. But so far from this being done, the people of the locality were almost invited to resist the laws and courts to which they had always lived in peaceable subjection. "The people of Prince Arthur's Landing," said the First Minister, "may resist the processes of law; they may say to the sheriff he is committing an illegality. A man may say to another who brings a suit against him, 'This is the process of an Ontario court, and Ontario laws do not extend here, because we are not part of that Province.' The same thing might happen with regard to every process of law and every title, whether the boundary is settled or not."

As to the remainder of the disputed territory, this Province had, before the passing of the Manitoba Act, assumed the duty obligatory on its Legislature and Government, of administering justice and maintaining order in this part of the Province. If the territory is in Ontario, as the arbitrators declare it to be, and as our people justly believe that it is, and if the Province were not to establish courts and appoint magistrates and other officers in it, the territory would practically be without law or lawful authority, and peace and order therein would depend on illegal force.

It appears from the Journals of the Canada House of Commons, that during the debate on the Bill resolutions were moved in vain to the effect, that in the meantime the eastern boundary of Manitoba should not include the disputed territory; and that at all events the Act should "provide some definite eastern limit, beyond which Manitoba shall not be deemed to extend, pending the settlement of the western boundary of Ontario." A party majority defeated these motions, and the Act, with its objectionable provisions unchanged, was passed by the House of Commons on the 21st March, 1881.*

It was the duty of the Federal authorities to protect the just rights of all its Provinces; to render unnecessary interprovincial conflicts for the maintenance of such rights; to employ the constitutional powers of the Dominion Parliament and Government respectively in minimising the evils of a disputed boundary pending the dispute; and to take steps for determining such evils at the earliest possible date. Unhappily, the present Federal authorities have not chosen to discharge these manifest duties; and by this Act, two sets of Provisional laws were to distract settlers in both the organized and the unorganized parts of the territory; two sets of Provincial courts and officers were to be set in array against one another everywhere; it was to be impossible for anybody to obtain a sure title to any land or timber in the territory; squatters and trespassers were to be the only settlers; and legitimate authority was only to be maintained by a conflict between the people of two friendly Provinces and of the disputed territory, in which con-

* Stats. Can., 44 Vic., ch. 14. [The Act is printed *ante*, p. 412. The Resolutions in amendment are printed *ante*, p. 410.]

flict Manitoba was, as against Ontario, to have the countenance and aid of the Federal authorities, with their contractors and armies of workmen. The former armed contests of trading companies for the possession of other portions of the territory were thus, at the instance and by the compulsion of Federal authority, to be renewed. Many lives were sacrificed in those old conflicts; more might be sacrificed in the new.

In the debate in the House of Commons, on the 18th of March,* the leader of the Government avowed as an object contemplated by transferring to Manitoba the interest of the Dominion in the disputed territory, that it would "compel" this Government not to insist on the awarded boundaries; and he assured the House that the Government of Ontario would "come to terms quickly enough when they find they must do so." No terms had ever been proposed to this Government, nor had this Government ever been asked to propose any to the Federal Government.

Afterwards, viz., on the 1st April, 1881 (the Committee of the House of Commons on the Boundaries not having yet reported), a petition, which appears to have been sent to the Dominion Government from Rat Portage, praying that a Court of Civil Jurisdiction might be established by the Dominion at that place, was replied to by the Under-Secretary of State, who stated in such reply,† for the information of the petitioners, that as Rat Portage would shortly be included within the Province of Manitoba, when the Act extending the boundaries of that Province should be brought into force (unless it be already within the limits of Ontario), and as the administration of justice and the establishment of Provincial Courts devolved upon Provincial authorities, it would not be proper for the Government to take action upon their petition. The suggestion that the Province of Manitoba should or might establish a Court at Rat Portage, without waiting the determination of the right to the territory, was not communicated to this Government, nor did this Government come to the knowledge of the letter of the Under-Secretary until the month of June following, when a copy of it was obtained and sent to this Government by their officer at Rat Portage.

It is evident from this letter, as well as from the whole course of the Dominion Government in connection with the matter, that the intention was, that, in defiance of the rights of Ontario, the Province of Manitoba should at once assume jurisdiction in the disputed territory, establish Courts, appoint officers and magistrates therein, and thus enter into a conflict with Ontario, and thus bring about perhaps the withdrawal of the officers of Ontario, and our leaving the territory for an indefinite time in the control of Manitoba and the Dominion.

A further communication, dated April, 1881, was received from the same stipendiary magistrate, and extracts embracing its material parts were, on the 25th April, transmitted to the Secretary of State at Ottawa, with a request that he would be good enough to state, for the information of this Government, what the facts really were as to the matters therein mentioned as having occurred since the award, and since the determination of the provisional arrangements which had been theretofore made with reference to the territory in question.

On the 27th April, the receipt of the despatch of the Provincial Secretary was acknowledged, but the information asked for was not given, nor was any reason suggested for not giving the same; nor has the information been given since, or any reason stated for not giving it. The communication stated to the effect, that in the year 1873, certain persons, therein named, entered into possession of a timber limit, which they had previously obtained from the Dominion Government, containing one hundred square miles; that the limit was surveyed, comprising several blocks; that those blocks were marked on a map issued by the Dominion Government, and coloured yellow, and showed all the timber lands the parties were entitled to; that during the summer of 1880, the senior partner had an interview with Sir John Macdonald, and asserted that when his Company obtained their limit they were allowed the privilege of selecting the quantity in several blocks, those blocks not to contain less than twenty-five miles each; that another firm named in the communication had secured a limit on the Lake of the Woods and its tributaries,

* Debates of the House of Commons, 1881, p. 1452.

† [Printed *ante*, p. 413.]

and had been allowed the privilege of selecting their limit in much smaller blocks; that the firm first mentioned asked to be allowed to relinquish their claim to at least one-half of their limit, and to be allowed to select an equal quantity in blocks of any size, wherever they could be found, and would suit their Company best; that their demands were assented to, accompanied with the remark that they had better get their limit arranged to suit themselves at once, as it might not be in the power of the Dominion Government to do them the favour in a short time hence; that this firm had occupied their limit for several years, and cut timber sometimes on their limit and sometimes in other places outside of it, and had (it was said) paid no dues to the Government for the timber, with the exception of what was cut last season; that during this time they discovered blocks more thickly timbered, of better quality and larger growth than the blocks originally selected and operated on by them, thereby obtaining an advantage not contemplated when they secured their limit, and securing a privilege not usually accorded to those enjoying timber limits; that one of the partners (named) had made strong representations to the Dominion Government of injuries sustained by them when the water broke into the canal last summer, and had claimed that the water privilege at Fort Frances had been destroyed by the canal being cut where it is, and (it was said) had obtained a promise from the Government at Ottawa of one of the most valuable water privileges on the Lake of the Woods, at Rat Portage, in lieu of the pretended damage to the one at Fort Frances; that all that was required to close the water out of the canal was a small dam across the mouth of the canal, which might cost from one to two hundred dollars, and then the privilege would be as good as it was formerly; that the said firm had also represented that their milling operations were delayed by the water breaking into the canal, while the fact is they sawed double the quantity of lumber in the same time that they had in any previous season; that it was also reported that a member of the House of Commons (named in the communication) had got a timber limit during the past year on the Winnipeg River, within the territory awarded to Ontario.

These were the statements made known to the Dominion Government, with the names of the parties referred to; and, from that day to this, the people and Government of Ontario have had no information from the Federal Government on the subject.

It appears from another communication of the same officer, that he held his first Court at Rat Portage on the 16th May, 1881; that a number of cases were tried and disposed of; that in some of them the money was paid by the judgment debtor before execution, and in others after execution; and that no question of jurisdiction was raised by, or on behalf of, any of the persons sued except Manning, McDonald & Co., contractors with the Dominion Government for a portion of the Pacific Railway. A judgment was given against these contractors, execution was issued, and a seizure made by the bailiff; that the bailiff was thereupon assaulted by an agent of the defendants; that he was subsequently arrested by a Dominion constable, and without being brought before any magistrate was put into the gaol so established by order of His Excellency the Governor-General in Council; that he was afterwards brought before the magistrate of the Dominion and fined one dollar or one day in gaol, and as he did not immediately pay the fine he was committed to gaol for performing his duty. Partly for want of a sufficient police force, and partly to avoid bloodshed, no further proceedings have been taken on the execution in his hands. It appears, also, that no new suits have been entered for the sittings of the Ontario Division Court at Rat Portage, on account of the question of jurisdiction having been raised by Messrs. Manning, McDonald & Co., as already mentioned, and of the process of the Court not having hitherto been enforced against them.

It is the opinion of the stipendiary magistrate that it will henceforward be impossible to enforce his judgments without the assistance of a considerable force, and that it is evidently the intention of the said contractors and others, henceforward to resist all process issued under the authority of this Province. The same course will no doubt be taken, whenever convenient, with reference to any process issued under the authority of the laws of Manitoba.

The Act which provided for the extension of the boundaries of the Province of Manitoba was to come into force on a day to be appointed by Proclamation by the Governor, to be published in the *Canada Gazette*. Such Proclamation was issued accordingly

on the 18th June, 1881, and declared the said Act to be in force on and from the 1st day of July, 1881.

By another communication from the stipendiary magistrate, dated 26th September, 1881, it appears that the Manitoba Government has since acted on the assumption that the disputed territory is within that Province, and has begun to exercise jurisdiction therein; and, amongst other things, sessions of the County Court of the Province of Manitoba have been appointed to be held at Rat Portage; a clerk for the court so to be held has been appointed; writs have been issued in the Court of Queen's Bench of the said Province against parties resident in the disputed territory; and a judge of a Manitoba court has already held one sitting at Rat Portage, and given judgment and ordered execution in cases brought before him.

The Government of Manitoba has made no communication to this Government in respect of any of its proceedings with respect to the said territory.

The stipendiary magistrate further reports that the Dominion Government had appointed an engineer in the employment of the contractors to act as timber agent at Rat Portage; that these contractors were taking timber for the purposes of their contract from the Crown Lands near Rat Portage; that they have also had a sawmill in operation for several months at Eagle Lake, making lumber, and are piling it up at the side of the railway to be shipped to Winnipeg when the railway is opened; that there is reason to believe that an effort will be made to procure a million ties, besides posts and telegraph poles, without paying dues thereon; that a large number of men are at work who have been sent out by another person in Winnipeg, who is named; and that if the contemplated proceedings are permitted to go on they will strip the country of its most valuable product.

The Agent of this Government at Prince Arthur's Landing reports that a gentleman, a resident of that place, has been exploring the pine timber on Lac Mille Lacs on the Height of Land (seventy miles from Prince Arthur's Landing); that the same person was then sending, or has sent, a party to make a survey of the locality; that he states he had applied to the Dominion Government for the timber, and was instructed to make this survey; and our Agent reports that the limits are good.

Various communications of the stipendiary magistrate further shew, that there is great need of a vigorous administration of the law in our territory north of the Height of Land, for the maintenance of peace and order; that there is much illicit liquor-selling in the territory, and much drunkenness, immorality and crime; that the question of jurisdiction has paralyzed his proceedings, and diminshed his usefulness in the suppression of disorder; and that the intervention of the officers of the Dominion has greatly increased the difficulties he has to contend with. The recent assumption of jurisdiction by the neighbouring Province of Manitoba, with the evident concurrence and approval of the Dominion Government, will, no doubt increase the difficulty still further. It is to be noted, that the active interference of the Federal authorities with our rights has been on the westerly side of the Province, where, independently of the award, our title is most clear, where the territory is most valuable, and where a vigorous administration of justice is most needed.

The instructions given to the stipendiary magistrate on his appointment were, that he should assume that the territory assigned to this Province by the award belonged to this Province, and should act without any reference to its being in dispute. He was afterwards directed to avoid, until further instructed, any conflict with the officers of the Dominion or of Manitoba. He now, in view of the difficulties thrown in the way of the administration of civil and criminal justice, desires to receive further instructions for his guidance.

The Federal Government has not yet communicated to this Government a definite refusal to confirm the award, nor has there been any direct vote of Parliament to that effect; but that such is the determination of the Federal authorities is abundantly implied in the various Governmental acts, Federal Statutes, and votes in the Federal Parliament, which the undersigned has referred to; and more distinctly in the speeches of Federal Ministers in Parliament. For example, in the debate on the Manitoba Bill, the First Minister thought fit to say, amongst other things, that the award was of no

value; and that the boundary assigned to us could not be supported in any court or tribunal in the world*—an observation which, the undersigned apprehends, shows only that the speaker had not had time or inclination of late to study the case on which he was pronouncing judgment, and had forgotten the views formed and insisted upon by successive Governments of which he was either the head or a distinguished member.

The urgent importance of the immediate settlement of the boundaries of Ontario has been repeatedly affirmed by the Governments of Canada, before Confederation and afterwards; and the urgency has been increasing year by year. It was never so great as it is now; and it is possible that the present Federal authorities may have done all which they think it needful or expedient to do to embarrass or weaken the demand of the Legislature and people of Ontario for their awarded rights; and that, if this Province were willing, the Federal Government and the Government of Manitoba might now concur with this Government in stating a Case for the immediate decision of the questions at issue by Her Majesty's Privy Council (which was the proposal of the Federal Government in 1872); and might in connection therewith concur in some reasonably satisfactory provisional arrangements for the settlement of the territory, the preservation of the timber therein, the administration of justice, and the enforcement of peace and order. Shall a negotiation with these objects be proceeded with, the result to be submitted to the Legislature at its next session?

It certainly is not reasonable or just that this Province should be put to a second litigation of the question of Right; but, on the other hand, the Province desires to secure, peaceably and with all practicable expedition, whatever limits it is entitled to; and if the Federal authorities use their constitutional powers, however unjustly, to "compel" a second litigation, Ontario may have no alternative but to agree to this condition. In 1872 the Government of Ontario proposed a "reference to a Commission sitting on this side of the Atlantic"—one reason given for such preference being that "the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time." The evidence thus referred to having since been collected, this reason would no longer apply if the Federal and Manitoba Governments would consent that the evidence so collected and in print for the use of the Arbitrators (with any other documentary evidence, if such is found) should be the materials on which the reference to the Privy Council is to proceed.

The undersigned has pointed out some of the evils of the existing state of things. He cannot conceal from himself that further evils to this Province may be created by prolonged delay. Even uncertainty as to the proper authority both makes government more or less difficult, and retards settlement. Settlers cannot feel sure of their title to their lands, or to the improvements which they make. Some men rather like a state of lawlessness, and run all risks; but many do not; and these are deterred by the uncertainty from remaining in the country or having transactions in it. Again, if the practical effect of Federal measures should be Ontario's temporary withdrawal from the territory, the danger is not to be overlooked that the territory may permanently drift away from Ontario. The population will get accustomed to the laws of Manitoba; will come to consider themselves as not belonging to Ontario; and the lands and limits which they occupy will have, for title, grants, licenses, contracts, or permits from another Government. To change the jurisdiction over the territory after its principal accessible parts have become populated under such circumstances, may be found to be most inconvenient, and even to involve insuperable complications and difficulties. Should these results not follow, we cannot conceal from ourselves that it has been proved by long experience that a Government on this continent cannot, if it would, ignore occupants of Crown Lands, though they may be occupants without title; and that (generally speaking) the occupancy is ultimately clothed with the title, either without compensation, or on terms different from those which might properly be imposed if the possession were vacant. *A fortiori* might this be found to be the case in the present instance, as respects occupants who should receive grants or licenses from the Government of the Dominion or of Manitoba.

* Debates, House of Commons, 1881, page 1452.

Dominion Ministers, speaking for the Dominion Government, said and shewed that the Hudson's Bay Company were mere "squatters" on the lands they occupied;* and yet the Dominion found it expedient afterwards to pay to the Company a considerable compensation to get rid of their claims, though the compensation was small as compared with value of the territory. In the present case the obtaining of damages against the Dominion would be no adequate compensation to this Province for wrongs done by Federal legislation, or by the acts of the Federal Government. Such damages would come principally out of the pockets of Ontario taxpayers, as being the chief contributors to the revenue of the Dominion; and any indemnity we could receive would practically be paid to a large extent with our own money.

An appeal to the electors of the Dominion for the rights of the Province has been suggested. Such an appeal may not be practicable in time to prevent irremediable evils resulting from delay; the first general election for the Dominion may not take place until the autumn of 1883; and at this election, whenever it occurs, the question as to the territory in dispute may be overshadowed by other issues which in Dominion politics divide parties, and with which the Legislature and Government of Ontario have nothing to do.

Notwithstanding that the Federal Government, since the award, has repeatedly declined to discuss suggestions made by this Government for an adequate provisional arrangement to be acted upon pending the dispute, and has proposed no other provisional arrangement, and has made no official communication whatever as to any mode of determining the question of right, still, in view of all the circumstances, and especially of the very serious evils, present and prospective, which the course of the Federal Government has created, and of the absence of any means of peaceably preventing such evils,—the undersigned ventures to recommend that he may receive authority from Your Honour in Council to endeavour once more, by personal conference or otherwise as may be found expedient or useful, to ascertain for the information and action of this Government, and of the Legislature of Ontario at its next session, whether the Federal Government and the Government of Manitoba can now be induced to concur in any mode of accomplishing a permanent settlement in relation to the disputed territory, in connection with adequate and proper provisional arrangements; and if so, what the best terms appear to be to which those Governments may be prevailed upon to accede.

All which is respectfully submitted.

O. Mowat.

November 1st, 1881.

The Lieutenant-Governor to the Secretary of State.†

Government House,

Toronto, 31st December, 1881.

Sir,—I beg to call your attention to the unfortunate condition of that large portion of this Province to which the Federal authorities dispute our right. I desire specially to refer to that part of the disputed territory, comprising about 39,000 square miles, which lies on the westerly side of this Province, and to which, by the Act of last session for the extension of the boundaries of the Province of Manitoba (44 Vic., cap. 14), the Federal Parliament transferred to that Province the claim of the Dominion, so far as relates to the Provincial jurisdiction therein.

I beg to remind you that the importance of having settled without further delay all questions in regard to the boundaries of the Province was repeatedly stated, and even insisted upon, by your Government as long ago as the year 1872. Thus in an Order in Council, approved by His Excellency the Governor-General on the 9th April, 1872, it was affirmed to be "of the greatest consequence to the peace and well-being of the

* Letter to Sir F. Rogers, 16th January, 1869, Book Arb. Doc., p. 324. [Printed *ante*, p. 149.]

† Sess. Papers, Ont., 1882. No. 23.

country in the vicinity of the dividing line, that no question as to jurisdiction, or the means of prevention or punishment of crime, should arise or be allowed to continue;" and it was not doubted "that both Governments would feel it their duty to settle, without further delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary."

On the 1st of May in the same year, Sir John A. Macdonald, the Premier, and then Minister of Justice, made a report, which was approved by Order in Council, in which report it was stated, in reference to the disputed territory, that "it was very material that crime should not be unpunished or unprevented;" and in this view it was suggested that "the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council of England." It was further stated that "the mineral wealth of the North-West country is likely to attract a large immigration into those parts; and with a view to its development, as well as to prevent the confusion and strife that is certain to arise among the miners and other settlers so long as the uncertainty as to boundary exists," it was recommended that a course of joint action should meanwhile be adopted by the Dominion and the Province "in regard to the grants of lands and of issuing licenses, reservation of royalties, etc."

By another Order in Council, approved on the 7th of November, 1872, His Excellency the Governor-General's Federal advisers obtained the sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of Ontario had already been affirmed by a Minute in Council," and that "the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to land, combined to render such a decision indispensable."

On the 26th of June, 1874, a provisional arrangement was made for the sale of lands in the disputed territory, which arrangement was in force from its date until 3rd August, 1878, when the award was made. By the award so much of the territory theretofore in dispute as was situate east of the meridian of the most north-western angle of the Lake of the Woods (say longitude 95° 14′ 38″ W.), was awarded to Ontario, and the claim theretofore made on behalf of this section of Canada to the territory beyond that meridian, to either the White Earth River or the Rocky Mountains, was negatived by the Arbitrators.

I beg to remind you that from that day to this the Federal Government has made no official communication to the Government of this Province of their intention to reject the award, but my Government has been left to gather this intention from the omission of the Federal Government for the first two sessions of Parliament to bring in any measure for the recognition or confirmation of the award; and from the speeches made in Parliament by Ministers during the last two sessions; and more distinctly from the transfer made last session to Manitoba by the Act already mentioned, and which Act, passed notwithstanding the remonstrances of this Government, had the effect of putting it out of the power of the Dominion to confirm the award without the concurrence of that Province.

My Government cannot doubt that the Federal authorities are aware, and will admit, that the progress of the country in the last nine years, and the realization during this period of the condition of things which in 1872 was only anticipated, have immensely increased the duty then perceived and expressed by your Goverment, that "no question as to jurisdiction or the means of prevention or punishment of crime should be allowed to continue;" and that there is a "necessity of meeting the demands of settlers and miners for the acquisition of titles to lands." Immigrants and others have, as anticipated, been attractad to the territory in dispute, in common with the rest of the North-West Territories; numerous settlers, miners and lumberers have now gone into the territory; a large floating population is there; also a considerable number of persons who desire to be settlers; and the lands, mines and timber of the territory are in active demand.

With respect to the timber, enormous quantities of it are being cut and removed by trespassers and others. Some of those engaged in the work assert that they have licenses, permits, or the like, from the Federal Government; and this Government has, in consequence, applied to your Government for information as to how far their pro-

ceedings have had the sanction of the Dominion Government; but the information has not been given, nor has any notice been taken of the application for it.

A communication from our stipendiary magistrate in the territory (a copy of which, or of its material part, was transmitted to you on the 8th March, 1881,) shows—what also appears from other quarters—that the explorers and miners on the Lake of the Woods had suffered great disappointments and losses from the continuance of the territorial dispute; that some of them had expended all their money in exploring and surveys, expecting an early return for their investments and toil, but that nothing could be done with mining capitalists because a sure title to lands could not be procured; that the delay of another year would ruin many; that many would be driven from the locality never to return, causing loss to merchants and others who had made advances to them; that the people of the locality were suffering in many ways from the unsettled condition of affairs, there being no civil court of acknowledged jurisdiction to collect debts, no land agent to locate settlers, no registry office to record deeds, and no disinterested timber agent to protect the forests; that all was uncertainty and confusion; that the claims to mineral lands had become so mixed that those who claimed locations would soon be unable to recognize their own property; that some places had been surveyed several times, the surveys covering each other; that the magistrate had no doubt there would be fighting, and perhaps murder, over these claims; that some persons were then armed to defend their supposed or assumed rights against wealthier claimants; and that whiskey-sellers were plying their illicit calling with great success, and much to the injury of the district. Since the date of this communication, the Manitoba Act referred to has introduced new elements of confusion and disorder. Two sets of Provincial laws, and two sets of Provincial officers, distract the inhabitants of both the unorganized and the organized parts of the territory.

As regards the organized portions, which lie south and east of the Height of Land —and where, up to the time of Confederation, and for many years before, the authority of the laws, courts and officers of Upper Canada had always been assumed, by the Government and the population, without dispute or question, and where, since Confederation, the authority of Ontario had continued to be assumed in the same manner—the unfortunate position of the inhabitants now, was, (in the debate on the Manitoba Bill), pointed out by the leader of the Government to be this: "The people of Prince Arthur's Landing may resist the processes of law; they may say to the Sheriff that he is committing an illegality. A man may say to another who bring a suit against him, 'This is the process of an Ontario Court, and Ontario laws do not extend here, because we are not part of that Province.'" The same things may be said in respect of the officers and courts of Manitoba in the same territory.

I have further to remind you that since the award was made, the Government of Ontario have repeatedly called the attention of your Government to the serious practical evils which were attending the dispute, and to the importance and duty of not delaying a settlement of the question, or of making adequate provisional arrangements if the award was not to be recognized by the Federal authorities; but no measure has ever been recommended to Parliament to remove or alleviate, with reference to civil rights or the trial of civil matters, the evils thus arising from varying laws and disputed jurisdiction.

In criminal matters only has something of a provisional kind been done, namely, by the Dominion Statute 43 Vic., cap. 46, continued until the end of next session by 44 Vic., cap. 15; and this legislation is so defective that no magistrate or justice of the peace acting in this disputed territory can feel any assurance that his jurisdiction will not be disputed, or his officers set at defiance or sued in trespass.

An authoritative determination of the right might be accomplished at once, by the Parliament of Canada and the Legislature of Manitoba passing Acts for this purpose, under the authority of the Imperial Act 34 and 35 Vic., cap. 28; and otherwise. But my Government are aware that the policy of the present Federal Government and Parliament forbids any expectation of that course being adopted.

In 1872 your Government proposed an immediate reference to the Judicial Committee of the Privy Council; and it was suggested in a communication to the Government

of Ontario that "no other tribunal than that of the Queen in Council would be satisfactory to the other Provinces of the Dominion, in a decision of questions in which they have a large interest, the importance of which is by current events being constantly and repeatedly augmented." My Government have observed also that in the debate in the Senate on the Manitoba Bill last session, Sir Alexander Campbell, speaking for the Government, said: "The boundary line will have to be settled. It will be settled, I suppose, by some reference to the Judicial Committee of the Privy Council of England, or some other tribunal. No particular burden will be thrown on Manitoba to procure a settlement." Speaking of the boundary line, the same Minister further observed: "Its location is a matter of dispute; and all we can do is to endeavour to get Ontario to agree to some tribunal by which it can be settled."

In the House of Commons' debate on the same Bill, at a subsequent time, the Premier said, speaking of his predecessors: "The Government were peculiarly bound to see that the question was left to a tribunal that could speak authoritatively; and I do not see, unless they were afraid of their case, why they [the Ontario Government] should have objected to the Imperial tribunal, to which it must go finally. That is the only way of settling the case. All must submit to that, the highest tribunal in the Empire."

Having reference to these observations, and remembering that the award of the distinguished gentlemen who were chosen by the two Governments as Arbitrators, and whose ability and impartiality have always been acknowledged, has not been satisfactory to the Federal authorities, I do not suppose that any tribunal constituted by agreement of the parties would, under all the circumstances, be proper or satisfactory.

A reference to the Judicial Committee of the Privy Council, or to any other tribunal, would involve much loss of time; and meanwhile the advices received from the territory indicate that the timber therein is being destroyed; that enormous quantities of it are being practically lost to the Province; and that the development of the territory is arrested, to the permanent injury of this Province, by the continued absence of undisputed authority to enforce order, administer justice, and grant titles. The evils arising from this state of things are so great, and are increasing so rapidly, and it is so important that the Province should without further delay secure peaceable possession of whatever limits it is entitled to, that my Government would be willing, with the concurrence of the Legislature, to submit the matter to the Privy Council, on condition of consent being given by the Dominion Government and that of Manitoba, and by the Parliament of Canada and the Legislature of Manitoba, to just arrangements for the government of the territory in the meantime.

Without such provisional arrangements, this Province may as well wait for the confirmation of the award, which (so far as concerns the rights and powers still remaining to the Dominion) my Government confidently expect from another Parliament, as go to the expense, and have the unavoidable delay of a second litigation.

From the time that it became manifest that the Dominion Government did not contemplate an early recognition of the award, provisional arrangements have from time to time been suggested by this Government, and by the Attorney-General on its behalf. I beg to refer you to the communications containing these suggestions; and I may add that your Government has not hitherto made any of them the subject of communication to this Government; nor have any counter propositions hitherto been suggested.

It may be convenient here to state the substance of these suggestions:

(1) By reason of the award, and of its accordance with the contentions of the Province and Dominion of Canada up to 1870, the *prima facie* title to the territory must be admitted to be in the Province of Ontario; and it was therefore proposed that, pending the dispute, this Province should have the authority of the Dominion to deal with the lands and timber (as in the other parts of the Province), subject to an account if the title is ultimately decided to be in the Dominion, and not in the Province.

(2) As (without a state of practical anarchy) there cannot continue to be two systems of law in this great territory of 39,000 square miles, the law of Ontario should, by proper legislation, be declared to govern in regard to matters which, by the British

North America Act, are within Provincial jurisdiction. This, or any other arrangement with regard to these matters, will now require legislation by Manitoba.

(3) It was further proposed that, pending the dispute, the jurisdiction of our Courts and officers should be recognized and confirmed; and that the jurisdiction of our stipendiary magistrates in the disputed territory should be increased to the extent contemplated by the disallowed Act, 42 Vic., cap. 19, Ont. This extended jurisdiction, it may be observed, would not be so great as the jurisdiction which has been conferred by Dominion Statutes upon similar magistrates in the territories of the Dominion. To prevent doubts, there should be legislation by the Federal Parliament, and by the Legislatures of both Manitoba and Ontario.

The Manitoba Act of the last session of Parliament has rendered necessary the concurrence of the Government and Legislature of Manitoba in the provisional arrangements referred to. But it is presumed that such concurrence would, if now desired or approved by the Federal Government, be given gladly; for it is not to be supposed that that Province—with its small revenue, and with the enormous additional demands upon it for the government and development of its undisputed territory, increased by the same Act from 13,464 to upwards of 100,000 square miles—can desire to have the further expense and responsibility of the temporary government of 39,000 square miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts, must feel it not improbable that Ontario has the right; since such was in effect the view taken and acted upon in every way by the successive Governments of Canada up to 1870; and since such highly competent referees as the Right Honourable Sir Edward Thornton, then Her Majesty's Ambassador at Washington, and now her Ambassador to the Court of St. Petersburg, the late Honourable Chief Justice Harrison, and the Honourable Sir Francis Hincks, K.C.M.G., declared and awarded the disputed territory to be within the boundaries of this Province.

I have called the Ontario Legislature to meet for the dispatch of business on the 12th of January. I perceive that the Parliament of Canada is to meet in the following month, and I would respectfully urge the great importance of my being officially informed, before the meeting of our Legislature, whether the Dominion Government is now willing, with the concurrence of the Legislature of Manitoba, so far as such concurrence is necessary, to agree to the arrangements which have been suggested, and to obtain from Parliament at its approaching session the Dominion legislation necessary to give effect to such arrangements. Or, if the Dominion Government is not willing to agree to the arrangements suggested, my Government would be glad to be informed what the best terms are to which your Government is prepared to agree, for the final settlement of the question of right, and for the provisional government of the territory in the meantime. I beg to remind you once more that since the award, no terms have ever been proposed to this Government with reference to either matter, unless it may be in the informal, and so far nugatory, negotiations which have recently taken place with the Attorney-General.

I beg also to renew the request made in a former despatch, but not hitherto noticed by your Government, for information as to the transactions of your Government with respect to the disputed territory since the date of the award. What my Government desire to have is, information of all transactions with respect to the timber and lands respectively, including copies of all grants, licenses, permits, regulations, instructions, letters, documents and papers of every kind relating to the same. This information my Government submit that they are entitled to receive, whether there is to be a provisional arrangement or not.

It has recently been stated in the public journals that the Federal Government had assumed authority to grant to the Pacific Railway Company land for their line of road through the disputed territory, and for timber purposes, a breadth of twenty miles on each side of this road throughout its whole length. No communication on the subject has been received from the Federal Government. If the newspaper statement is correct, my Government respectfully submit that, as the right to the territory is in dispute, no such grant should have been made without the concurrence of the Provincial authorities; and that if their concurrence was not cared for, they should at all events have had

previous notice of what was contemplated, that they might have had an opportunity by negotiation or expostulation, of seeing that, if possible, the interests of the Province were not set at naught. I have respectfully to request copies of the Orders in Council and other documents (if any) relating to the transaction.

I have the honour to be, Sir,

Your obedient servant,

J. B. Robinson.

To the Honourable the Secretary of State,
Ottawa.

Extract from the Speech of His Honour the Lieutenant-Governor on the Opening of the Ontario Legislature, 12th January, 1882.*

I regret that since your last Session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory, our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute. The grave practical evils resulting from the dispute have, since you last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land. While the Bill was before the House of Commons, I addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the intended Act. A copy of my despatch, with other papers relating to the territory, will be laid before you.

Paragraph Three of the Proposed Address, in Reply to the Lieutenant-Governor's Speech at the opening of the Ontario Legislature. Moved 13th January, 1882.†

3. That we agree with His Honour that it is to be regretted that since our last Session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute ; and that the grave practical evils resulting from the dispute have, since we last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land ; and we are glad to learn that while the Bill was before the House of Commons His Honour addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the intended Act, and that a copy of his despatch, with other papers relating to the territory, will be laid before us.

On the 26th January, 1882, Mr. Meredith, seconded by Mr. Morris, moved in

Amendment to the third paragraph of the proposed address,‡

That the third paragraph be struck out, and the following substituted therefor :— "That while we regret the delay which has occurred in the final settlement of the

---

* Journals Leg. Ass., 1882, Vol. 15, p. 3.

† *Ibid*, p. 9.

‡ *Ibid*, pp. 21-3.

Northerly and Westerly Boundaries of the Province, and while we are prepared at all times to maintain by all lawful and constitutional means its territorial and other rights, we deprecate the taking of any course in the enforcement of those rights which is calculated to disturb the peace of the Dominion, and we desire to express our regret that your Honour's advisers have not taken the only lawful and constitutional means which in the absence of the approval of the award by the Parliament of Canada are open for the determination of the question in reference to such boundaries."

Mr. Sinclair, seconded by Mr. Hagar, moved in

AMENDMENT TO THE AMENDMENT,

That all after the first word "That" in the amendment be struck out, and in lieu thereof, there be inserted these words, "that part of the original resolutions under consideration by the House be amended by adding thereto the words following:—And we avail ourselves of this, the earliest opportunity at the present session, to reiterate our determination to give our cordial support to any steps which may be necessary for ascertaining and maintaining the just claims and rights of Ontario, as by the said award found and determined; and in the name of the people of Ontario we emphatically insist that any absence of prior legislation on the part of the Dominion to give effect to the conclusions which should be arrived at by the Arbitrators, can neither justify nor excuse the action of the Dominion authorities in now repudiating the said award, and refusing to give to Ontario her just rights as thereby ascertained and determined."

And a debate having arisen,

Ordered, That the debate be adjourned until to-morrow.

On the 27th January the Amendment to the Amendment, having been put, was carried on the following

DIVISION:

YEAS—Messieurs Appleby, Awrey, Badgerow, Ballantyne, Baxter, Bishop, Blezard, Bonfield, Caldwell, Cascaden, Chisholm, Crooks, Deroche, Dryden, Ferris, Field, Fraser, Freeman, Gibson (Hamilton), Gibson (Huron), Graham, Hagar, Harcourt, Hardy, Hawley, Hay, Hunter, Laidlaw, Livingston, Lyon, McCraney, McKim, McLaughlin, MacMahon, Mack, Miller, Mowat, Murray, Nairn, Neelon, Pardee, Peck, Robinson (Cardwell), Robinson (Kent), Robertson (Halton), Sinclair, Snider, Striker, Waters, Watterworth, Wells, Widdifield, Wood, Young—54

NAYS—Messieurs Baker, Baskerville, Bell, Boulter, Brereton, Broder, Creighton, French, Jelly, Kerr, Lauder, Lees, Long, Macmaster, Madill, Meredith, Merrick, Metcalfe, Monck, Morgan, Morris, Near, Richardson, Robertson (Hastings), Tooley, White—26.

THE THIRD PARAGRAPH, AS AMENDED,

was then read as follows:—*

That we agree with His Honour that it is to be regretted that since our last session no progress has been made towards a recognition of the right of the Province to that extensive portion of its territory our title to which, notwithstanding the award of the distinguished Arbitrators appointed by the two Governments, the Federal authorities have continued to dispute; and that the grave practical evils resulting from the dispute have, since we last met, been greatly increased by an Act of the Federal Parliament transferring to the Province of Manitoba, so far as relates to Provincial jurisdiction, the claim of the Dominion to the most valuable part of the disputed territory, including our organized municipalities south and east of the Height of Land; and we are glad to learn that while the Bill was before the House of Commons, His Honour addressed to the Federal Government a despatch protesting, on behalf of Ontario, against this part of the

* Journals Leg. Ass., 1882, Vol. 15, p. 23.

intended Act, and that a copy of his despatch, with other papers relating to the territory, will be laid before us. That we avail ourselves of this, the earliest opportunity at the present session, to reiterate our determination to give our cordial support to any steps which may be necessary for ascertaining and maintaining the just claims and rights of Ontario, as by the said award found and determined; and in the name of the people of Ontario we emphatically insist that any absence of prior legislation on the part of the Dominion to give effect to the conclusions which should be arrived at by the Arbitrators, can neither justify nor excuse the action of the Dominion authorities in now repudiating the said award, and refusing to give to Ontario her just rights as thereby ascertained and determined.

Agreed to, on the same division.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.*

OTTAWA, 27th January, 1882.

SIR,—I have the honour to inform you that His Excellency the Governor-General has had under his consideration in Council your despatch bearing date the 31st December, 1881, relating to the disputed territory west and north of the Province of Ontario.

I have now to state for the information of your Government as follows:

1. The position of His Excellency's advisers has been uniform from the beginning. They have on all occasions been anxious to obtain from the highest tribunal approachable, an authoritative decision of the question in dispute, but have been unwilling, and have considered it inconsistent with their duty to treat the matter as one which might be dealt with by arbitration.

2. There is a legal boundary between Ontario and the recently acquired North-West Territories; and as representing the various Provinces of the Dominion who have acquired that territory, it is the duty, it is conceived, of the Government of the Dominion not to give away any part of it, nor to agree to arbitration upon its boundary, but to ascertain what its legal extent is.

3. This disposition on the part of His Excellency's advisers was also the conviction of the Government in office at the time the territory was acquired, and for some years afterwards, and the anxiety which is felt now was expressed then by the several Orders in Council which are referred to in your Honour's despatch.

4. The North-West Territories were acquired in 1870, and on the 9th of April, the 1st of May, and the 17th of November, 1872, the importance of settling the boundary, and of settling it as a question of law, which could be determined by a Judicial Tribunal, was pressed upon the consideration of His Excellency's predecessor, and communicated to the Government of Ontario by the several Orders in Council referred to in your despatch.

5. Had the proposal then made for the submission of the dispute to the Judicial Committee of the Privy Council been accepted by Ontario, the delays and inconveniences alleged in the communication under consideration to have occurred would have been avoided. The matter would long since have been settled by the highest authority in the Empire, and the boundary between Ontario and the then recently acquired North-West Territories authoritatively and finally settled.

6. His Excellency's advisers believe that it is much to be regretted, in the interest of Ontario, as well as of the Dominion at large, that a proposal so reasonable in itself, and which would have brought to the consideration of the legal question involved the most learned and accomplished minds in the empire, and given every assurance of a speedy and satisfactory decision, and one which would have commanded universal assent, was not accepted by the Government of Ontario.

---

* Sess. Papers, Ont., 1882, No. 23; Return, Ho. Coms,. dated 14th February, 1882. [There being verbal differences between the printed copies of this despatch, the original despatch has been followed in the copy here given, except as to one word hereinafter noted.—G. E. L.]

7. It does not appear that any response was made by the Government of Ontario to the proposal to submit the question to the Judicial Committee of the Privy Council.

8. The proposal of 1874, referred to in your despatch, that the question in dispute should be referred to arbitration, does not seem to have been treated by either Government as a mode of seeking an authoritative decision upon the question involved as a matter of law, but rather as a means of establishing a conventional line without first ascertaining the true boundary. In corroboration of this view it is to be noted, that of the three gentlemen who made the award referred to in your despatch under the reference of 1872, two were laymen, and only one of the profession of the law.

9. His Excellency's advisers are of opinion that in advance of Parliamentary sanction it was not only highly inexpedient, but transcended the power of the Government of the day to refer to arbitration the question of the extent of the North-west Territories acquired by the Dominion by purchase from the Hudson's Bay Company.

10. That territory had been acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion, and the extent of it was a question in regard to which, if a dispute arose, Parliament only could have absolved the Government of the day from the duty of seeking an authoritative determination by the legal tribunals of the country. Such a decision having been once obtained, if it had been found that it promised to be to the convenience of Ontario and the adjoining Province that a conventional boundary should be established in lieu of the legal boundary, authority might have been sought from the Legislatures of those Provinces and from the Parliament of the Dominion for the adoption of such a conventional line.

11. That the course pursued was not intended as a means of seeking a legal boundary is further shown by the course pursued by the Legislature of Ontario, who, under the provision contained in the Imperial Act 34 and 35 Vic., Cap. 38, enabling the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province, with the assent of its Legislature, passed an Act giving their assent to the limits of their Province being changed by Parliament to meet the award, whatever it might be. The passage of such an Act shows that it was not sought that the true boundary line should be ascertained, but that a conventional one should be laid down.

12. It must further be observed that a Committee of the House of Commons has reported as follows, viz.:—

"In reference to the award made by the arbitrators on the 3rd day of August, 1878, a copy of which is appended (p.), your Committee are of opinion that it does not describe the true boundaries of Ontario. It seems to your Committee to be inconsistent with any boundary line ever suggested or proposed subsequent to the Treaty of Utrecht (1713). It makes the Provincial boundaries run into territory granted by Royal Charter in 1670 to the Merchants Adventurers of England trading into Hudson Bay, and it cuts through Indian territories which, according to the Act 43 George III., Cap. 138, and 1 and 2 George IV., Cap. 66, formed 'no part of the Provinces of Lower Canada or Upper Canada, or either of them,' and it carries the boundaries of Ontario within the limits of the former colony of Assiniboia, which was not a part of Upper Canada," showing how unwarrantable it would have been for the Government of the Dominion to have undertaken to ask Parliament to adopt the award as one defining the true boundaries.

13. On assuming office, His Excellency's present advisers found that no authority had been obtained from Parliament for the reference made in 1874 of the dispute to arbitration. They themselves were opposed to that mode of disposing of the question, conceiving it to be inexpedient and lacking in legal authority, and that the duty of the Government was to seek for the disposal of the matter as a question of law.

14. It is to be borne in mind that when the proposal of the reference to the Judicial Committee of the Privy Council was suggested, and its expediency enforced by the Dominion Government in 1872, the Supreme Court of Canada had not been brought into existence, and there was therefore no high tribunal other than the Judicial Committee of the Privy Council in England by which the question in dispute could have been authoritatively settled.

15. In 1875 the Act creating the Supreme Court was passed by the Parliament of

Canada, the British North America Act, 1867, authorizing that Court to be created *inter alia* for the purpose of dealing with inter-Provincial and constitutional questions, and upon the creation of that Court it would seem to have become the tribunal to which both Federal and Provincial Governments should have resorted for the decision of the question now under discussion.

16. As in 1872 the Government of the day was anxious to submit the question to the then highest tribunal, so now His Excellency's present advisers would readily consent to use the influence of the Dominion Government with that of Manitoba to obtain a submission of the whole question as to the boundary to the Supreme Court of Canada, under the 52nd section of the Act of 1875, establishing the Court. They trust with confidence that their exertions with the Government of Manitoba would be attended with success, and that such submission would be agreed to by that Government.

17. Another method of obtaining an authoritative decision was pointed out to the Attorney-General of Ontario at an interview sought for that purpose with him by Sir John Macdonald and the Minister of Justice, who, on the 21st of November last, proposed to Mr. Mowat, at his office in Toronto, that the Government of the Dominion and that of Ontario should unite in soliciting the good offices of some eminent English legal functionary for the purpose of determining the true boundary line. The names of Lord Selborne, who was then, it was reported, likely to seek relief from the fatigues of his office, and of Lord Cairns, were suggested by Sir John Madonald, who proposed that one or other of these noblemen, or some other distinguished legal functionary, should be invited to come to Canada, to sit in Toronto or elsewhere, for the purpose of hearing the evidence and deciding upon the boundary question as one of law, susceptible of being determined by evidence as other important questions are.

18. The great advantage in such a submission would be that whilst legal ability and learning of the highest character would be secured for the decision of the question, it would have given both parties the opportunity of submitting such evidence as they might think proper, and the difficulty of agreeing on facts, and settling a case to be submitted to the Privy Council, would have been avoided. Evidence would be heard upon the spot, and the fact of the hearing and the arguments of counsel taking place in the country would have tended to command general assent.

19. This proposition was taken into consideration by Mr. Mowat, and it is only recently that he conveyed to the Minister of Justice his indisposition to accede to that proposal; but it is one which His Excellency's Government is still ready to adopt, if their previous suggestion of a submission to the Supreme Court of Canada should not command the assent of the Government of Ontario.

20. As regards the assertion in Your Honour's despatch, that the enlargement of the boundaries of Manitoba has complicated the present question, this Government are unable to adopt the view put forth in the despatch. The original confines of Manitoba were very small, and the rapidly augmenting population of that Province had made the fact a ground of continued complaint, and the Local Government had urged upon the Government of the Dominion that the limited extent of their Province paralyzed their efforts in the development of the Province, in the establishment of municipalities, and the creation of means of communication, and otherwise. It was uncertain how long the disputed boundary question might remain open, and His Excellency's Government felt themselves constrained, finally, to recommend the enlargement of the boundaries of Manitoba, but Parliament did so in such a manner, and in such language, as carefully guarded against the step constituting any interference with the disputed question of the western limits of Ontario.

21. It is believed that the Government of Manitoba would readily acquiesce in the question of the boundary line being brought for decision either before the Supreme Court of Canada or the high legal functionary, as suggested by Sir John Macdonald and the Minister of Justice, to Mr. Mowat, on the occasion referred to.

22. His Excellency's advisers look upon this question as one which should be considered rigidly as one of Law, on account of the fiduciary character which they hold in regard to the various Provinces of the Dominion, whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for

the purpose of constructing a line of railway through it, to which the Government of Ontario (although the railway passes for upwards of 600 miles through its territory) have refused to contribute any aid in land, as has so largely been done out of the North-West Territories by the Dominion.

23. The Government of the Dominion believe that the interests of Ontario are considered by the action which they advise as much and as strongly as the interests of any other Province. Their only anxiety is that a legal question in which Ontario is interested by itself, and in which it is interested also as a member of the Confederation, should be disposed of by a Legal Tribunal.

24. They heartily wish that the proposal urged by the Dominion Government in 1872 for a submission to the Judicial Committee of the Privy Council had been accepted by Ontario, and they cannot but attribute much of the inconvenience and delay alleged in your despatch to have occurred to the refusal of Ontario to unite in such a submission.

25. To the arbitration of 1874 His Excellency's Government was unable, for the reasons assigned, to give their adhesion ; but, with Ontario, they believe it to be of the greatest importance that the dispute should be settled, and they will be anxious to further in every way in their power the submission of the question either to the Supreme Court of Canada or to an eminent legal functionary, to be mutually agreed upon ; or, if it be preferred by the two Provinces of Ontario and Manitoba, to the Judicial Committee of the Privy Council, although His Excellency's advisers would prefer that it should be decided in Canada, either by the high legal functionary, as suggested, or by the Supreme Court, with the right of applying to the Judicial Committee of the Privy Council for an appeal to the Queen from any decision which may be arrived at, should either Province desire it.

26. The question of the title to the land in the disputed territory should not be confused nor mixed up in any way with that relating to the boundaries.

27. The Indians, and the Crown, and those claiming under them, have rights which can* be decided by the ordinary tribunals of the Province within which the land in dispute may finally be found.

28. With respect to the timber, of which it is said in Your Honour's despatch that enormous quantities are being cut and removed by trespassers and others, this Government have ascertained that no licenses have been issued to cut timber east of that boundary since the establishment of the Conventional line in 1870. Information regarding all permits, licenses, and other transactions would be readily furnished to the Government of Ontario at any time.

29. The assumption in your despatch that the Conventional boundary terminated on the 3rd August, 1878, the date of the award referred to, seems to be without foundation; but if the Conventional line is to be considered as having been then abrogated, it must be considered as at an end for all purposes, leaving both parties to assert their own rights in reference to all the questions involved.

30. As regards the Government of the country, and the enforcement of law and order in the meantime, it was intimated to Mr. Mowat, at the interview above referred to, that the Government of the Dominion would be ready to agree to such measures as were necessary to prevent confusion in these important respects. The suggestion was then made that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba, and that all the judges of Ontario and all the judges of Manitoba should be put in a joint commission as regards the disputed territory. The laws of Ontario and Manitoba being alike in most respects, no confusion would probably arise. That in criminal matters the Act 43 Vic., Chap. 36, had made, it was thought, satisfactory provision; or if there was anything deficient, the Government of the Dominion would be ready to ask Parliament to supply it. That where there was found to be a practical difference between the laws of Ontario and those of Manitoba, the Government of the Dominion would use its good offices with the Government of Manitoba to induce

* [In the original despatch the word "can*not*" is here used.—G. E. L.]

them to consent that the law to be administered should be that of Ontario, as regards all matters of Provincial jurisdiction, until the legal limits of both Provinces should be finally ascertained.

I have the honour to be, Sir,

Your obedient servant,

J. A. Mousseau,
Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

The Lieutenant-Governor to the Secretary of State.*

Toronto, 18th February, 1882.

Sir,—I have the honour to acknowledge the receipt of your despatch dated 27th January last, and, for the information of the Government of the Dominion, I beg to submit the following reply.

My Government are glad that, though the Federal Government have for more than three years refrained from noticing requests and suggestions repeatedly made by the Government of Ontario with respect to the disputed territory, and from making any official communication of the views of your Government as to the question of title, or as to provisional arrangements necessary for the government and settlement of the country while your Government were pleased to dispute our title, your despatch has at last placed this Government in official possession of the views of the Federal Government on these subjects. My Advisers deeply regret to find those views so unsatisfactory, and (as they respectfully submit) so unjust to the people of Ontario. But a frank discussion of them may be of service to the interests concerned.

Your despatch intimates distinctly, what had been already perceived, though not before officially stated to this Government, that the policy of your Government is to reject and disregard the Award; and your despatch states the reasons for this course. I notice that among these reasons it is not suggested (as of course it could not be), that the arbitrators were not able and impartial men, well known, and held in high estimation in this country; or that they had not before them all the known evidence bearing on the subject with the decision of which they had been entrusted; or that they did not do their best to come to a correct conclusion. The reasons which you give are of an entirely different kind, namely, that the reference "transcended the power of the Government of the day;" that the matter should be "considered rigidly as one of law;" that the duty of the Government was to seek "an authoritative determination by the legal tribunals of the country;" that the reference "was not intended as a means of seeking a legal boundary," but that the object of it was that "a conventional line should be laid down;" and that His Excellency's present advisers were "opposed to disposing of the question" by arbitration, conceiving that mode to be "inexpedient and lacking in legal authority." These seem to my Advisers to be, under the circumstances, unprecedented grounds of objection. A difference of opinion between one set of Ministers and their successors as to the expediency of having settled a controversy by arbitration, seems to my advisers to be no sort of justification for the repudiation of an Award after it has been made in good faith.

Awards and Treaties between Governments often require subsequent Parliamentary sanction; but in such cases my advisers claim that, according to the ethics of nations, it is the recognized and bounden duty of the Governments to obtain such sanction, or to do their best to obtain it; nor are changes in the *personnel* of either Government allowed to affect the obligation.

There are very recent examples of this old-established doctrine. The British Gov-

*Sess. Papers, Ont., 1882, No. 23.

ernment thought it their duty to obtain the prompt sanction of Parliament to the Alabama Award, though it was not, like the present, a unanimous Award, and though both the Government and the people regarded the amount awarded as excessive and exorbitant. So, on the other hand, in the United States of America, Congress gave prompt effect to the Fishery Award, though it was not a unanimous Award, and though the people and their representatives regarded it as grossly unjust. In the present case a unanimous Award has for more than three years been disregarded by the Federal authorities of Canada; and, while they contend that it assigned to Ontario more extensive boundaries than, as a matter of rigid law, this Province possessed, there is (on the contrary) reason for believing that if the Award errs in that respect, the error is in assigning to Ontario too little territory instead of too much.

It appears to my advisers that many circumstances give exceptional force to the considerations which demanded the acceptance of the Award by the Federal authorities.

The reference was made with the practical concurrence of Parliament; and Ontario had every reason for assuming and relying upon the general acquiescence of the Dominion. The reference had been agreed to in November, 1874. It was embodied in Orders of Council, approved by His Excellency the Governor-General and by His Honour the Lieutenant-Governor respectively. The three Arbitrators were immediately notified of their appointments, and their consent to act obtained. The reference was publicly known, and seemed to receive general approval. The Legislature of Ontario, in 1875, passed the Provincial Act to which your despatch refers, and, in common with the Dominion Government, proceeded, at considerable expense, to obtain, for the purposes of the arbitration, from Europe and America, all documentary and other evidence bearing on the question in dispute. The Imperial Government was apprized of the arbitration, and its assistance was given in an exhaustive search of the Colonial Office for State Papers. The fact of the reference was communicated by Ministers to Parliament at its first session after the reference had been agreed to, and it was repeatedly alluded to during the Parliamentary sessions held before the making of the Award. At no one of the four sessions intervening was any motion passed, or even proposed, in either House of Parliament, disapproving of the reference; nor, so far as my advisers are aware, did any member at any one of these sessions contend or suggest that the reference "transcended the power of the Government of the day," as is now alleged. Two or three members expressed an opinion in favour of a different mode of settlement; and even this expression of opinion seems to have occurred in the session of 1875 only. In the session of 1878 an appropriation of $15,000 to pay the expenses incident to the reference was voted by Parliament; and without objection or question by anyone.* The documents and other evidence obtained from time to time were printed; statements of the case of the respective Governments were prepared and furnished to the Arbitrators; the question was argued by counsel on both sides; and the Award assigned to this Province part only of the territory which the Dominion Ministers, before compromising with the Hudson's Bay Company, had claimed as clearly belonging to this section of Canada.

The Award was made on the 3rd August, 1878. A change of Government took place on the 17th October following. The new Government on coming into office gave no notice to this Province that the Award was to be repudiated. On the 1st November, 1878, a map of that date was "published by order of the Honourable the Minister of the Interior," marking the boundaries of Ontario in precisely the manner assigned by the Award. On the 31st December, 1878, a despatch to your Government stated that a measure would be introduced during the then approaching session of the Ontario Legislature, to give effect to the Award by way of declaratory enactment and otherwise; and the despatch suggested that a like Act should be passed by the Parliament of the Dominion.† In answer to this despatch no notice was given that the Federal Government meant to repudiate the Award; no warning to refrain from passing, or to postpone passing, the proposed Act; and accordingly the Ontario Legislature, at its next session, passed an Act consenting that the boundaries, as determined by the Award, should be

* House of Commons Debates, 1878, p. 2528, item 292.

† Sessional Papers, Ontario, 1879, Vol. 2, No. 80.

the northerly and westerly boundaries of the Province.* A like Act not having been passed at the next session of the Federal Parliament, and no reason for the delay or omission having been communicated to this Government, two despatches were addressed to your Government, dated respectively 23rd September and 19th December, 1879. In the despatch of the 23rd September, it was, amongst other things, urged that, an Award having been made in pursuance of a reference by the two Governments, it was just that there should be no further delay in formally recognizing the Award as a conclusive settlement of the matters submitted to the arbitrators; that the Government of Ontario did not doubt that the Government and Parliament of Canada would ultimately take the same view; but it was respectfully represented that the delay in announcing the acquiescence of the Dominion authorities, and in otherwise giving full effect to the Award, had been embarrassing and injurious.† By the despatch of 19th December, 1879, the attention of your Government was called to a former despatch, and it was intimated "that the arbitrators having made their Award, the Government of the Province understand that the provisional arrangement theretofore in force between the Province and the Dominion" was "at an end, the Award having 'definitely settled' the boundaries of the Province and the Dominion," within the meaning of the provisional arrangement.‡ The receipt of these despatches was formally acknowledged, but neither of them was answered otherwise. No exception was taken to the alleged termination of the provisional arrangement; and the Province was still left without any intimation of an intention to repudiate the Award. The first intimation of this intention was given during the session of Parliament held in the year 1880. Until then there was no known act of the Federal Government or speech of Federal Ministers which did not consist with an ultimate recognition of the Award by the Government of Canada.

The recognition of the Award by the Parliament of Canada is desirable, to prevent doubts and disputes; but my Government do not admit that the Award has no legal force without such Parliamentary action. It is to be remembered that the British North America Act contains no provision giving authority to Parliament to deal with the boundaries of the Dominion or Provinces; and my Government contend that the reference was within the powers incident to Executive authority. It is admitted in your despatch that a reference to the ordinary legal tribunals would have been within such authority, and it is not easy to see why a reference, made in good faith, and with the acquiescence of Parliament for several years, to a Tribunal created by mutual consent for the purpose, should stand in a different position. Even if the Award is supposed to have no legal effect until sanctioned by Parliament, still it appears to my Government to be inconsistent alike with reason and justice, with British precedent and practice, that the Federal Government should, at this late date, and after all these proceedings, refuse to ask such Parliamentary sanction, or that His Excellency's present Advisers should seek to excuse a repudiation of the Award, by alleging inability in their predecessors to sanction an arbitration, or by the preference of His Excellency's present Advisers for some other scheme of adjustment. References to arbitration, without previous Parliamentary sanction, of matters involving large sums of money have been frequent; and, for this purpose, between questions of money and questions of territory there is not in reason any solid distinction. If, as your despatch suggests, the Dominion Government occupy a fiduciary position with reference to the territory in question, it is equally true that they occupy a fiduciary position in regard to every power which, as a Government, they possess or exercise.

It seems to my Government that, under all the circumstances, the Award should have been promptly accepted, even if it had appeared that the arbitrators had not found or awarded what they considered to be the legal boundaries, and, disregarding these, had merely laid down the boundaries which they deemed most convenient and reasonable. But it so happens that the surmise in your despatch, that the Governments did not contemplate that the arbitrators should find the legal boundaries, is unsupported by evi-

* 42 V., chap. 2, Ont.

† Sessional Papers, Ontario, 1880, No. 46.

‡ Sessional Papers, Ontario, 1880, No. 46, p. 2; *Ib.* 1875, No. 14.

dence, and is entirely without foundation. The Order of the Privy Council of 12th November, 1874,* expressly stated the object to be "to determine by means of a reference THE northern and western boundaries" of the Province; and the Order provided, that the "determination of a majority of such three referees be *final and conclusive* upon the limits to be taken as and for such boundaries respectively." The Minister further recommended, and His Excellency approved the recommendation, "that the Dominion agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith." The Order of the Lieutenant-Governor in Council was to the same effect as regards this Province.

One of the arbitrators who were first named having died, and another having resigned, new arbitrators were appointed in their places—viz., Chief Justice Harrison and Sir Francis Hincks; and, these gentlemen having signified their acceptance, they were promptly put in possession of the documentary and other evidence. The formal Orders in Council appointing them were made some time afterwards, and when the arbitrators met to hear counsel—viz., on the 31st July, 1878. By the Order in Council of that date, approved of by His Excellency, it was again provided "that the determination of the Award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as *final and conclusive*," with the same agreement as before with respect to legislation.† A like Order in Council was passed by the Ontario Government. It is not pretended that the arbitrators received any instructions beyond the Orders in Council. The statements of the case which were prepared by counsel for the respective Governments, and printed and laid before the arbitrators, discussed the question of boundaries as a matter of law.‡ The *viva voce* arguments also of counsel, on both sides, before the arbitrators dealt with the question as a matter of law;§ and the Award affirms that it determines and decides "what *are* and shall be the northerly and westerly boundaries of the Province."‖

To assume in the face of all this, and without evidence, that the arbitrators did not propose to find, or did not find, what in their opinion were and are THE boundaries, the true boundaries, the legal boundaries, is what, in the view of my advisers, neither Government can possibly do on any principle known in law, or recognized in public or private transactions.

The case does not even rest here. Sir Francis Hincks, the Arbitrator for the Dominion, has taken occasion to communicate the facts to the public. In a lecture delivered by him on the 6th May, 1881, he states that "the arbitrators were guided in their decision solely by Acts of Parliament, proclamations authorised by Orders in Council on the authority of Acts of Parliament, and international treaties. . . . The arbitrators were of opinion that, having reference to all the facts of the case, the boundaries set forth in the Award were supported to a larger extent than any other lines by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal." In the lecture he gives a *résumé* of the grounds on which the arbitrators proceeded, and all of these go to shew the legal boundaries. As to the western boundary, he says that "the arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods was the true point of departure." This point settled the western boundary as awarded, and it is in this district of the Province that the Federal authorities have actively interfered with the rights of the Province, and that the territory is most valuable, and a vigorous administration of justice most needed. The northern boundary (in the opinion of the arbitrators), owing to the vagueness of the

* Sessional Papers, Ontario, 1875, No. 14, p. 14.

† Sessional Papers, Ontario, 1879, No. 42.

‡ Sessional Papers, Ont., 1879, No. 13; Report of Boundary Committee, House of Commons, Can., 1880, pp. 237, 291.

§ Report of Boundary Committee, House of Commons, 1880, pp. 262, 301, 325.

‖ Report of Boundary Committee, House of Commons, 1880, p. 480.

language employed in the proclamation issued under the Act of 1791, is more "open to doubt;" but the doubt of the arbitrators was, as Sir Francis Hincks states, "whether Ontario should not have had more territory;" not whether it should have had less. Indeed, the groundlessness of the notion that the Award gives to Ontario more territory than it is entitled to is further demonstrated by the statement of Sir Francis in the same lecture, that "the only questions of doubt were decided in favour of the Dominion; that both on the west and north the doubts were whether Ontario should not have had more territory." Your despatch objects to considerations of "convenience" being taken into account, as if such considerations could have nothing to do with the question of legal boundaries; yet convenience, or the argument *ab inconvenienti*, is a recognized element of legal interpretation where other considerations leave a question of construction in doubt.

Against all this evidence that the question which the arbitrators considered (whether they were bound to do so or not) was the question of the true legal boundaries, and that what they awarded was what they believed to be the true legal boundaries, your despatch suggests merely two circumstances: (1) that two of the arbitrators were laymen; and (2) that the Act of the Ontario Legislature 38 Vic., chap. 6, affords an inference in favour of the Federal assumption. An elaborate argument with regard to either point is unnecessary. As to the first point, four things may be shortly observed: (1) The question to be arbitrated upon involved facts as well as law. (2) If two of the referees were laymen, the remaining arbitrator, the late Chief Justice Harrison, was an able lawyer and Judge—a gentleman, it may be added, who was a Conservative in politics, and an old personal friend of the present First Minister of Canada. (3) The two arbitrators chosen by the Governments in 1874 were Judges—Chief Justice Richards and Judge Wilmot; Sir Edward Thornton was soon afterward selected by the two Governments as the third arbitrator. (4) The case was one in which eminent publicists, like Sir Edward Thornton and Sir Francis Hincks, were, by their training and mental habits, quite as well fitted as any lawyer to ascertain and determine the legal boundaries. Sir Edward Thornton, it may be observed, had four successive times been accredited to great Courts in Europe and America as an Ambassador of the highest rank and with full powers. He possessed, moreover, a most unusual topographical knowledge of this continent. Sir Francis Hincks had spent nearly half a century in colonial life, and had filled positions of the largest responsibility in the public service of Canada.

Then, as to the inference suggested from the Ontario Statute * passed under the provision contained in the Imperial Act, 34 and 35 Vic., chap. 38, which enabled the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province with the assent of its Legislature, it is only necessary to observe that the British North America Act contained no provision for settling questions of boundaries between Provinces, or between a Province and the Dominion; that, as between Canada and New Brunswick in 1851, a special Imperial Act for a like purpose was deemed expedient; and that by the legal effect of the Imperial Act, 34 and 35 Vic., chap. 38, concurrent Statutes by the Parliament of the Dominion and the Legislature of Ontario, fixing the true legal boundaries, would be as effectual as if a variation of the legal boundaries had been intended.

But would it be correct or proper to repudiate the Award if there had been some reason—which there is not—for assuming or supposing that it gave to Ontario boundaries somewhat more extensive than its strict legal boundaries? Whether the Award has or has not given accurately the true legal boundaries, it certainly does not assign to Ontario as much territory as Canadian Governments of which His Excellency's present Chief Adviser was either the head or a distinguished member, had repeatedly and confidently claimed for this section of Canada from the year 1857 up to the year 1870. Nor so much as was claimed for Upper Canada on the 15th January, 1857, when a Minute of Council, approved by His Excellency the Governor-General, was transmitted to the Colonial Secretary, in which it was stated that "the general feeling here is strongly that the western boundary of Canada

* R. S. O., chap. 4; 42 Vic., chap. 2.

extends to the Pacific Ocean." * Nor so much as in an official paper of the same period, the Commissioner of Crown Lands of Canada claimed for us, when he asserted that the westerly boundary of the Province extended "as far as British territory not otherwise organized would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi, which a due west line from the Lake of the Woods intersected, which would be the *White Earth River*;" and when, with respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction." Nor has so much been awarded to us as Chief Justice Draper was in the same year sent to England by the Canadian Government for the very purpose of claiming or demanding for this section of the Province, as against the Hudson's Bay Company.† Nor so much as that distinguished Judge claimed accordingly before a Committee of the British House of Commons in May and June of that year.‡ Nor so much as in a letter from him dated 12th June, 1857, after he had elaborately examined the question, he communicated the opinion that we had a "clear right to."§ Nor so much as the Dominion Ministers, Sir George E. Cartier and the Honourable William McDougall, in an official letter to Sir Frederick Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, insisted that Upper Canada so clearly included that "no impartial investigator of the evidence in the case could doubt it."‖ But for the circumstance that, as between Great Britain and the United States, by the joint effect of the Treaties of 1794, 1814, 1818 and 1842,¶ the source of the Mississippi was taken to be, as between the United States and the British possessions, in Turtle Lake, at a point in nearly the same longitude as the most north-western point of the Lake of the Woods, the arbitrators could hardly have failed to hold that our westerly boundary was to be found at White Earth River, west of the Province of Manitoba as constituted previously to its extension by the Federal Parliament at its last session.

My Advisers feel surprised that, under all these circumstances, the Federal authorities should appear to have applied themselves for two years and more to the task of finding some plausible ground for repudiating the Award, even though they may hope (what my Advisers deny) that a rigid technical interpretation of the documents, in connection with the other evidence relating to the subject, might possibly limit the boundaries of the Province still further.

Your despatch says that the North-West Territory (of which the now disputed territory is assumed to be part) "was acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion." In saying this, the Federal Government overlook the circumstances under which, and the means by which, the so-called acquisition was accomplished. In all the negotiations with the Hudson's Bay Company, the Federal Government insisted that almost the whole territory so said to have been acquired belonged already to Upper Canada (now Ontario); that the Hudson's Bay Company, so far as they were in possession of any part of this territory, were but squatters on it**; that this was perfectly clear; that "no impartial investigator of the evidence could doubt it." So strong were the grounds on which this contention rested, that the Company, acting under the advice and with the aid of the ablest counsel, and of some of the shrewdest men of business in England, gave up their claim to some 1,300,000 square miles of territory—half a continent—in consideration of being allowed to retain about 12,000 square miles of it, and of receiving for the rest the comparatively paltry sum of £300,000 sterling.†† The United States of America gave to the Russian Government in 1867 nearly five times as much ($7,200,000) for the comparatively barren and valueless territory of Alaska, with an area not nearly half that to which the

* Sessional Papers, Canada, 1857, Vol. 15, No. 17. † *Ibid.*, Vol. 15, No. 17.

‡ Hudson's Bay Rept. Com., England, 1857, pp. 212, 374, etc.

§ Book Arb. Docs., p. 391. ‖ *Ib.*, p. 324. ¶ *Ib.*, pp. 20 and 21.

** Letter to Sir I. Rogers, 16th January, 1869, Book Arb. Docs., p. 324;

†† See Book Arb. Docs., p. 407 *et seq.*

Hudson's Bay Company released its claim. The comparatively small sum mentioned was accepted by the Hudson's Bay Company because of the reason there was to apprehend that the legal boundaries of Upper Canada would be held, if submitted to a trial, to include all or nearly all the territory which the Canadian Ministers claimed for it, instead of merely the 100,000 square miles, the right of Ontario to which the Federal authorities now persistently resist, in spite of a solemn Award, and in spite also of the previous contentions and demands of Ministers of the Dominion itself.

It is further to be observed that the Hudson's Bay Company never pretended, as against the territorial jurisdiction of Upper Canada, that they had any claim under their Charter to any territory south of the Height of Land.

In the claim against the Hudson's Bay Company, the Dominion Government were trustees for Ontario; and, on principles well recognized in equity jurisprudence, their compromise of the claim should enure to the sole benefit of Ontario, on condition only of this Province making good the paltry sums by which the compromise was effected. On the equitable principles referred to, as these are constantly applied between individuals, the Dominion Government had and have no right, without the consent of the Legislature and Government of Ontario, to hold the territory for the other Provinces of the Dominion. This consideration does not affect the question of what the legal boundaries of Ontario are, but does greatly strengthen the political and moral obligation of the Award being accepted by the Dominion frankly and promptly, and may be important hereafter in determining the questions which may arise between the Dominion and Ontario consequent on the delay which has occurred, and on the use made by the Dominion of the territory acquired by means of the supposed and asserted rights of this Province and otherwise.

It seems to my Advisers incredible that the Federal Government can have had all these considerations in mind when placing so much stress on the supreme "duty" of "rigidly" confining Ontario to its strictly "legal bounds," even at the expense of repudiating a solemn Award, made in good faith by arbitrators as distinguished, and as well qualified for their office, as could be found on this continent, or indeed anywhere.

The objection of the Federal Government to a settlement of the question by arbitration is further remarkable (in the view of my Advisers), because arbitration has always been a customary mode of settling questions of this very kind between two Governments.

It is scarcely necessary to illustrate so frequent an event in history, or so elementary a principle in international or municipal Law, as the settlement of disputed boundaries by reference. As early as 1697, a portion of the very territory now in dispute was by the Treaty of Ryswick made the subject of an arbitration, the parties submitting to the arbitration being no less personages than William III. of England, and Louis XIV. of France. The commissioners were "to examine and *determine* the rights and pretensions which either of the said kings hath to the places situated in Hudson Bay;" and the articles agreed to by the commissioners "shall be satisfied by both kings, and *shall have the same force and vigour as if they were inserted word for word* in the present Treaty." Even within the Canadian annals of this century there is a precedent, which is not without significance, for the arbitrated settlement of disputed boundaries between Provinces. In 1846, in order to adjust a boundary dispute which had prevailed since the Ashburton Treaty, between Canada and New Brunswick, Mr. Gladstone, then Secretary for the Colonies, constituted a Boundary Commission of the Attorney-General for Nova Scotia, and two officers of the Royal Engineers. A report was made defining a conventional boundary as the best attainable. The documents chiefly involved in that question were, as in the question now under discussion, the Proclamation of 1763, the Treaty of Utrecht, the Quebec Act of 1774, a Governor's Commission, and contemporary Maps and State Papers. The finding of the Commission was unfavourable to the Province of Canada, and its Executive Council disputed the "justice or equity of the recommendations of the Imperial Commissioner."* In view of the controlling importance attached by the Federal authorities in the present case to the strictly legal boundaries as being those only to which attention should be directed, the reply of Earl Grey (2nd June, 1850) reads curiously. His Lordship

* Sessional Papers, Canada, 1852-3, App. ZZ, p. 1.

said that "The decision of a court of justice appears unsuited to the case. The question in a legal point of view seems to turn on the words of the Quebec Act of 1774. But a tribunal could scarcely pronounce a decision which should define the whole line of separation between the Provinces. And, even if it could do so, it could only interpret and follow the letter of the Act, and not adopt any line of compromise which might be most advantageous to both parties." The matter was afterwards submitted to arbitration, the Governor-General selecting one arbitrator, the Lieutenant-Governor of New Brunswick another, and the two arbitrators choosing a third. After some delay a majority Award was rendered, reaffirming in the main the report of Mr. Gladstone's Commissioners, and the Award was enacted into the Imperial Statute 14 and 15 Vic., Chap. 63.

Now that you have communicated to the Government of Ontario, for the first time, the grounds on which the opposition of your Government to the Award proceeds, or is supposed to be defensible, and have thus given to this Government the opportunity of discussing the matter with your Government, my advisers are unwilling to think that the overwhelming reasons which this simple statement of the facts affords for a recognition of the Award, may not even now prevail with your Government to acquiesce in the Award, and to obtain from Parliament at its present session the proper legislation, as well as to get the Legislature of Manitoba to abandon the claim which the Federal Parliament transferred to that Province, in regard to the 39,000 square miles on the westerly side of Ontario.

The transfer to Manitoba included the 7,000 square miles of territory lying south of the Height of Land, and west of the line to which the Federal authorities desire to limit this Province. I have said this territory was not claimed by the Hudson's Bay Company under their charter, nor was there any ground or pretence for so claiming it. Before 1870 it had been treated at all times, and for all purposes, as belonging to this section of Canada. As such it had, before Confederation, been the subject of grants, licenses, and other transactions on the part of the Provincial Government. So much of the territory as was from time to time settled or occupied by a white population was governed, without any question on the part of anybody, by the laws, courts and officers of Upper Canada; and since Confederation the same territory has uninterruptedly been governed by the laws, courts and officers of Ontario; it has had municipal organization as part of this Province; the Ontario District of Algoma has for all purposes of the Dominion and Province been considered to include it; and Provincial money has from time to time been expended in making surveys, and in making roads, bridges, and other improvements, and in administering justice and maintaining peace and order in the territory. The land is part of certain territory which was the subject of an Order in Council of the Government of Canada, and of a treaty by that Government with the Indians, as long ago as 1850. To this territory Mr. Ramsay, counsel for the Dominion, reported (18 March, 1873) that Ontario was equitably entitled. He justly said that "in creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed. Now, it is incontestable that up to 1867 the Government of Canada *de facto* extended to the Height of Land which forms the water-shed of the water system of the St. Lawrence and the Great Lakes.....It would therefore seem that in fairness to the Province of Ontario the old line of the Height of Land should be adopted as the western as well as the northern boundary of the Province of Ontario."* Thus, in refusing to leave this territory with Ontario, and in transferring to Manitoba their claim to it, the Federal authorities have endeavoured to take from Ontario territory which the chosen counsel of the Dominion Government, a Queen's Counsel of the Quebec Bar, had told that Government "it is not possible to conceive that the Imperial Parliament intended" to withdraw from this Province; and to which he declared it to be "incontestable that up to 1867 the Government of Canada, *de facto* [and therefore Upper Canada, *de facto*] extended," and which, in "fairness to the Province of Ontario," it should be allowed to retain. But all these considerations have been disregarded.

The only shadow of claim which the Federal Government can have to this portion

* Report of Boundary Com., Ho. Coms., Canada, 1880, p. 218.

of the disputed territory appears to be under an Order of Her Majesty in Council, dated 31st July, 1880, annexing to Canada all British territory in North America not already belonging to it (except Newfoundland).* And if the legal interest in the territory in question became thereby vested technically in the Dominion, it is manifest that, both under the Award and independently of it, the authorities of the Dominion should have treated their acquisition as a trust for Ontario, and should at once have transferred the territory to this Province, instead of making it over, or endeavouring to make it over, to another Province.

Your despatch proposes that Ontario should abandon the Award, and submit the question anew to the Supreme Court of Canada for adjudication. This is the mode which your despatch intimates that your Government now prefer to any other for a new litigation of the question of title. It seems to my advisers to be remarkable that if this mode of settlement is so peculiarly appropriate and desirable as your despatch contends, the suggestion is now made for the first time. A great and obvious difference between a submission to the Supreme Court now, and a direct immediate reference to the Judicial Committee of the Privy Council is, that the former course would create years of further delay and involve great additional labour and expense; and without any advantage, as the final decision would be by the Privy Council. The proposal implies, too, that your Government contemplate that the evidence shall be taken anew, and according to the usual practice of taking evidence in ordinary cases. A suit, involving facts covering a period of nearly two centuries, and requiring documentary and other evidence from the Imperial archives in London, the archives of the Hudson's Bay Company, the Public and other Records in Paris, Washington, Albany, Quebec, Ottawa, and elsewhere, would afford unusual occasion for repeated and long-continued delays and innumerable harassing questions of procedure. If the object were delay, no better means of delaying a conclusive decision could be devised. My Government decline consenting to the submission.

The proposal for inviting one of the two Law Lords named in your despatch, or "some other eminent English legal functionary," to come to Canada "for the purpose of hearing the evidence and deciding upon the boundary question as one of law," seems to my advisers to stand next in order as a means of indefinite delay. In view of the objection taken by your Government to any form of arbitration, my Advisers were surprised at the proposal to submit the question to another referee, sitting alone, and without appeal, and who, though an English judge, would in this matter be acting as an arbitrator. Then it is extremely doubtful if either of the noblemen named would accept the invitation, especially in view of the time which taking the evidence might occupy; and if either were willing to accept the reference, my Advisers are of opinion that the decision of the question by any one English Judge, however exalted, would not "command general assent" to the same extent, or to anything like the same extent, as the decision of three Arbitrators of such eminent ability, and so well known to our people, and standing so high in public estimation here, as Sir Edward Thornton, Sir Francis Hincks, and the late Chief Justice Harrison. It may further be observed that no English judge has jurisdiction in his own country to adjudicate on the title to an acre of land, except subject to appeal; and that this Province should voluntarily abandon the adjudication of the three Arbitrators named, in order to have another trial and decision by one English judge, without appeal, as to the title to 100,000 miles of territory, is a proposal which does not commend itself to my advisers as one possible to entertain.

I may refer here to the charge which you make against the Government of Ontario, of refusing to contribute any land of the Province to the construction of the Pacific Railway, while you contrast with this alleged refusal the fiduciary character which your Government hold "in regard to the various Provinces of the Dominion whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for the purpose of constructing a line of railway through it;" and you also contrast with the assumed refusal of the Ontario Government the course of the

* Prefix to Dom. Statutes, 1880-81, p. ix.

Dominion in largely contributing to the work "out of the North-West Territories of the Dominion." My Government are not aware of any application to them by your Government for any contribution, in land or otherwise, to the work mentioned. My Advisers are of opinion also that in making the charge you have forgotten that the greater part of the territory referred to, and by far the more valuable part, was acquired by the Dominion through setting up the title thereto of Ontario in opposition to the Hudson's Bay Company; that so far as regards that portion of the territory which does not in law or equity belong to Ontario alone, Ontario is one of those Provinces of the Dominion to whom the North-west Territories belong, whose money has been expended in their acquisition, and whose people are taxed to construct the railway; and that, in fact, by far the larger part of the money so expended and of the taxes so imposed is contributed by the people of Ontario. It is with their money and their lands, far more than with the money or lands of any of the other Provinces, that the railway is being constructed; and why Ontario should be called on to offer a further contribution out of lands within its own bounds, towards implementing the contract entered into for this Dominion work, my Advisers fail to perceive.

The expressed object of my despatch of the 31st of December last was to ascertain officially whether your Government could not be induced, without making further unnecessary delay, to consent to some just and adequate arrangements for the government of the country, the preservation of the timber, the granting of titles to settlers, and the recognition of an undisputed authority to enforce order and administer justice. The evils of the existing state of things in the disputed territory are already so great, and are increasing so rapidly, and it had become "so important that this Province should without further delay have peaceable and undisputed possession of whatever limits it is entitled to," that my Government were "willing, with the concurrence of the Legislature, to submit the matter to the Privy Council on condition of consent being given by the Dominion Government, and that of Manitoba, to just arrangements for the government of the country in the meantime. Without such "provisional arrangements" my despatch stated that the Province might as well wait for the confirmation of the Award by another Parliament, as go to the expense and have the unavoidable delay of a second litigation. I therefore desired to know whether the Dominion Government were willing to agree to the provisional arrangements which had theretofore from time to time been suggested in written communications by this Government, and by the Attorney-General on their behalf, and which my despatch repeated; and if your Government were not willing to agree to the arrangements specified, I desired to be informed what the best terms were to which your Government were prepared to agree.

With respect to provisional arrangements, my advisers regret to find, from your despatch, that the Federal Government decline to agree to the suggestion that, "pending the dispute, the Province should have the authority of the Dominion to deal with the lands and timber as in the other parts of the Province (subject to an account if the title should ultimately be decided to be in the Dominion and not in the Province);" and my advisers further learn with regret that the Federal Government decline to make any arrangement whatever as to either the timber or the lands, and even intimate that if the provisional arrangement of 26th June, 1874, which gave to the Dominion the temporary right of selling lands west of the provisional line is at an end, the effect will be held by the Federal Government to be, "to leave both parties to assert their own rights, in reference to all the questions involved,"—an observation which seems to mean that the Federal Government will in that case proceed to deal at their discretion with the lands on both sides of this line, notwithstanding the dispute as to the title.

My Advisers are of opinion that no provisional arrangements can be adequate which do not (amongst other things) include just arrangements regarding the sale of lands, and the preservation of timber. Even to leave to Ontario the sole government of the country pending the dispute, while the Federal Government continue to deny to this Province the right of dealing, provisionally or otherwise, with a single mile of the territory, or a single tree growing thereon, and insist on remaining unshackled in their own dealings with both land and timber to which they have no right, would be a concession of little

practical value, and entirely insufficient to justify the abandonment by this Province of the awarded rights which it possesses.

But your despatch does not even propose to leave to Ontario the sole government of the territory pending the dispute. My advisers understand from the manner in which your despatch refers to the laws of Ontario, that the meaning of your proposal is, that the two Provincial Governments should have concurrent authority in the territory—an arrangement which my advisers respectfully think would in practice be absurd and impossible. To remedy, in any adequate way, the present unhappy state of the territory, my advisers consider it absolutely necessary that (pending the dispute) the Ontario Lieutenant-Governor in Council should, in the territory in question, have the authority which, in the public interests, is exercised in the other parts of this Province, and is no less needed in this unsettled territory. So, the Legislature of Ontario should be at liberty (pending the dispute) to legislate for the territory from time to time, as its needs and interests require. My advisers are of opinion that for the peace and order of the territory, the due administration of justice, the development of the country, and the interests of settlers and others, nothing short of an unqualified application to the territory of all the laws of Ontario, including the authority of its Government and Legislature, would accomplish the objects in view; and my advisers entirely fail to see that any legitimate purpose would stand in the way of such a provisional arrangement. As observed in my former despatch, it is not to be supposed that the Province of Manitoba, with its small revenue, and with the enormous demands upon it for the government and development of its undisputed territory, can desire the further expense and responsibility of the temporary government of 39,000 miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts must feel it not improbable that Ontario has the right.

If a provisional arrangement were made, and confirmed by proper legislation, for the government of the country by Ontario, without dispute, until the settlement, somehow, of the question of title, there might not be excessive embarrassment or inconvenience in giving effect to the suggestion "that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba;" or, perhaps, in giving effect to the further suggestion, "that all the judges of the two Provinces should be put in a joint commission as regards the disputed territory," if these concessions should be required by the authorities of the Dominion and of Manitoba; but the details necessary for carrying out these suggestions would require careful consideration by all parties concerned.

With reference to your observations on the enlargement of the boundaries of Manitoba by the Act of last session, this Government have made no complaint of the extension of that Province by the addition to it of undisputed territory. On the contrary, in my despatch of the 15th March last, it was observed that "so far as the territory to be comprised within the limits of the Province of Manitoba is clearly and undisputably within the jurisdiction of the Parliament of Canada, my Government rejoice at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and the North-West territories the direct benefit of Provincial and Municipal Government. But while the extension of the boundaries in directions as to which there is no dispute is matter of congratulation," the transfer of the disputed territory to that Province was strongly objected to, for reasons there set forth. A hope was expressed, which the result proved to be vain, that, in view of the representations made in the despatch, your Government might "even yet see fit so to modify the measure before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages to the Province of Manitoba, in whose rapid progress and development this Province, as a portion of the Dominion, feels profound satisfaction."

The wrong which your Act of last session did, consisted, not in adding to the Province of Manitoba nearly 100,000 miles of undisputed territory, but in making the further unnecessary and objectionable addition of 39,000 miles of territory not only disputed, but in fact belonging to this Province. This feature of your Act greatly

complicated matters, inasmuch as the Government of that Province has since assumed to exercise jurisdiction in the disputed territory, with the concurrence and approval of your Government; and inasmuch also as the consent of the Government and Legislature of Manitoba became thenceforward necessary to any arrangements which the Federal authorities and those of Ontario might see fit to make, whether for determining the question of right, or for providing for the government of the country pending the dispute. It is satisfactory to learn from your despatch, that your Government are confident that the Government and Legislature of Manitoba would concur in any arrangement of which your Government may approve. But if the Federal Government will make no just provisional arrangement in regard to the lands and timber; and continue, notwithstanding the dispute, to deal with these as subject to their own discretion; and yet demand that this Province abandon the Award, and submit to a new litigation of the question of title, as the condition of making or procuring the other just and necessary provisional arrangements proposed, my Advisers are of opinion, and feel bound frankly to state it, that Ontario should not and will not submit to a demand which they cannot but consider most unreasonable.

I am advised to remind you that Ontario with its awarded boundaries has not so large an area as either Quebec or Keewatin; or an area much exceeding the undisputed territory given to Manitoba; or much more than half the area of British Columbia.

Your despatch seems to intimate that no licenses have been issued to cut timber east of the provisional boundary line agreed to in 1874 (you mention the year 1870, it is presumed, by mistake); and you add, that information regarding all permits, licenses and other transactions would be readily furnished to the Government of Ontario at any time. This Government did not suppose that any licenses had been issued by the Federal Government to cut timber east of the provisional line, and will be glad to be furnished with the information promised in respect to their transactions of any kind in this part of the disputed territory.

My Advisers regret that your Government give no information, and do not apparently offer any, with respect to transactions affecting that important part of the disputed territory which lies west of the provisional line, though such information has been repeatedly requested on behalf of the Ontario Government. My Advisers once more respectfully insist that, whether the title of Ontario to the territory is disputed or admitted, and whether the provisional agreement of 1874 is in force or at an end, the Government and people of Ontario are entitled to full information respecting these transactions, including (as my despatch of the 31st December mentioned) copies of all grants, licenses, permits, regulations, instructions, letters, documents and papers of every kind relating to the same.

My Advisers regret also that your Government have not thought fit to give any answer to that part of my despatch which referred to the reported grant to the Pacific Railway Company of land for their line of road through the disputed territory, and (for timber purposes) a breadth of twenty miles on each side of this road throughout its whole length, or to my request for copies of Orders in Council and other documents, if any, relating to the transaction.

Your despatch refers to an interview of Sir John Macdonald and the Minister of Justice with the Attorney-General on the 21st November last. The Attorney-General considers that there are several (no doubt unintentional) inaccuracies in what is said or implied in your despatch as to this interview, and as to what took place then and afterwards. I do not deem it necessary to refer to any of these inaccuracies further than to observe that the interview was not "sought" by the Ministers named, but by the Attorney-General, in letters to Sir John Macdonald and Sir Alexander Campbell respectively; and that the Attorney-General's communication to the Minister of Justice with respect to the proposed reference to Lord Cairns or Lord Selborne was made on the 30th of the same month, and not at a more recent date. But whatever may or may not have been said at that interview or otherwise, your despatch states what your Government desire now with a view to the settlement of the dispute, and what provisional arrangements your Government are willing now to make; and, while my Government do not

approve of either of the two modes of settlement which you prefer in case there should be a new litigation, and though they regard the provisional arrangements which you mention as entirely insufficient to justify (for the sake of such arrangements) a recommendation to the Legislature of Ontario to abandon any of the awarded rights of the Province, and at this late date to voluntarily enter upon a new litigation on the question of Title; still, my Government trust that the Federal authorities will recognize the duty of making the provisional arrangements required, without attempting to exact from the Province, as a condition, the abandonment of its awarded rights, and a new litigation of the question of Title.

The evils which the territory is enduring in consequence of the dispute should surely be reduced to a minimum by every means in the power of the Federal authorities. The dispute is by them; the evils are of their creating; and no one can justify leaving this immense territory without settled laws and settled government. Ontario has a special interest in this object, apart from the value of the territory, its lands and mines and timber; as many of the people of the Province have gone there to settle or to trade, and more desire to go. Some local improvements, too, which Ontario might at once undertake, would serve to open and develope important sections of the country. Municipal organization is already necessary in some localities, and our people in the territory desire the extension to it of our school system, and desire that assistance from our School Funds which our people in the rest of the Province receive. It is with the laws of this Province that the settlers are familiar; the Province has organized courts in the territory, and has appointed officers to administer our laws. My Advisers hope that, without attempting to exact from the Province conditions to which its representatives cannot agree, the Dominion authorities will at last take the "measures necessary to prevent confusion in these important respects;" will, as regards criminal matters, supply by the proper legislation the deficiencies pointed out by this Government in past communications with respect to the Dominion Statute 43 Vic., chap. 36; and will, as regards matters of Provincial jurisdiction, obtain the consent of Manitoba to the legislation immediately required for placing beyond question the subjection of the territory to all the laws of Ontario, until the termination of the dispute which the Dominion authorities have raised. My Advisers respectfully suggest that the simplest and best way of accomplishing the last of these necessary objects would be, by obtaining from the Legislature of Manitoba an Act consenting to the repeal of so much of the Act of last Session as had the effect of assigning to that Province the claim of the Dominion to 39,000 square miles of the disputed territory, and by procuring from the Federal Parliament an Act giving effect to such consent, and containing the other necessary provisions for securing the important objects mentioned.

But I am advised that no provisional arrangement would be so satisfactory, or so beneficial to the development and settlement of the territory, the maintenance of order, and the due administration of justice therein, as the just course of obtaining, without further delay, by proper legislation from the Federal Parliament and the Legislature of Manitoba, the recognition of the Award as a final adjustment of the boundaries of this Province. The evils already endured are beyond recall, but the continuance or aggravation of them from this time forward is in the hands of your Government.

I earnestly commend all these considerations to the best attention of the Federal Government.

I have the honour to be, Sir,
Your obedient servant,

J. B. Robinson.

To the Honourable J. A. Mosseau,
Secretary of State, Ottawa.

RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF ONTARIO RESPECTING THE BOUNDARY QUESTION, AND RESOLUTIONS PROPOSED IN AMENDMENT, 9TH MARCH, 1882.*

The Attorney-General moved, seconded by Mr. Pardee, the following

RESOLUTIONS :

1. That, having considered the despatches of the Government of Ontario to the Federal Government, dated respectively 31st December, 1881, and 18th February, 1882, and a report of the Attorney-General, dated 1st November, 1881, on the subject of those portions of this Province to which the Federal authorities have asserted an unjust and unfounded claim, this House desires to record its concurrence in the views and representations which are expressed in the said despatches and report.

2. That the persistent endeavours of the Federal authorities to deprive this Province of one-half of its territory are, in the interest of the people of Ontario, to be opposed by every constitutional resort within the reach of this Province.

3. That this House protests against the conduct of the Federal Government in enforcing a pretended ownership in this territory ; in assuming to make sales therein without the concurrence of the Provincial authorities ; in promoting, under colour of Federal grants and licenses, the destruction of its valuable timber ; in inducing the inhabitants to set at defiance the laws and authority of this Province ; in prevailing on a neighbouring Province to assume jurisdiction in the territory by establishing courts and by other executive acts, and thereby to assist the Federal Government in neutralizing or embarrassing the territorial jurisdiction of this Province.

4. That a unanimous award was made on the 3rd August, 1878, determining the boundaries between this Province and the territories of the Dominion ; that this award was made in pursuance of a reference designed to be binding and conclusive, entered into by the two Governments in good faith, with the knowledge of the Parliament of Canada, and acquiesced in until long after the proceedings under the reference had terminated ; that this award was made by distinguished Arbitrators of the highest character, after an exhaustive collation of all known evidence bearing on the subject ; that the award assigned to Ontario less territory than His Excellency's present advisers, as well as previous Canadian Governments, had, in other contentions, invariably claimed to lie within this Province ; that more than two years elapsed before the Federal Government gave any notice of an intention to reject the award ; and that the course of the Federal Government in now rejecting such an award is unprecedented in British practice, is opposed to the usages of civilized government, and is a grievous wrong to the people of Ontario.

5. That the extension of Manitoba by the Federal Act of last Session receives, so far as the territory added is undisputed, the hearty approval of the inhabitants of Ontario ; but, in the name of the people of this Province, this House protests against the transfer attempted by the same Act, of 39,000 square miles of the territory which was awarded to this Province, and which forms by far the most valuable portion of that territory ; that such transfer greatly aggravated the difficulties already created by the unjust proceedings of the Federal Government, and can only be regarded as an act of direct antagonism and hostility to the interests and rights of this Province.

6. That while the attempted transfer to another Province of any part of the territory awarded to Ontario was a grievous wrong to this Province, this House cannot too strongly express the injustice of including in the transfer 7,000 square miles of the Ontario District of Algoma, south of the height of land, which before Confederation had been an undisputed part of Upper Canada *de facto*, had been settled by its people and governed by its laws, to which no counter claim had been set up from any quarter, and which after Confederation continued to be regarded and dealt with as an undisputed part of this Province, until the present controversy arose ; that the British North America Act expressly declared that what "formerly constituted the Province of Upper Canada shall constitute the Province of Ontario ;" and, therefore, that every consideration of Imperial

* Journals Leg. Ass., *1882*, vol. 15, pp. 154-161.

intention, as well as of justice and fair dealing, demanded from the Federal authorities a confirmation of the title of Ontario to this part of the territory, even if such confirmation had, in law, been required.

7. That it is on the westerly side of this Province that, independently of the award, the title of Ontario to the territory is the most clear, and the territory the most valuable; that it is in this part of our unorganized territory that undisputed authority and a vigorous administration of the law are most needed for the maintenance of peace and order, the suppression of illicit liquor-selling, and of drunkenness, immorality, and crime; that the course of the Federal Government has to a large extent paralyzed the efforts hitherto made under the authority of this Province for the prevention of disorder; that by the effect of the Dominion Act of last Session relating to Manitoba, and by the action taken thereunder with the concurrence and approval of the Federal Government, two sets of Provincial laws distract settlers; two sets of Provincial courts and officers are set in array against one another; no sure title can be obtained to any land or timber in the territory; squatters and trespassers, so far as Federal authority can accomplish such a result, are to be the only settlers; the country is being stripped of the timber which is its most valuable product; capital and immigration are diverted to other territories, where a settled Government and settled laws prevail; an interest antagonistic to this Province is created in those who go to the territory, by giving to them seeming titles the validity of which depends on resisting successfully the authority of Ontario; and complications are created which, if allowed to continue without interference, will seriously impede the practical incorporation of the territory with this Province, to which it belongs.

8. That the policy of the Federal authorities is inexplicable except in the light of the avowal which, in the debate in the House of Commons on the Manitoba Bill, was publicly made by the First Minister, when he announced that the purpose was to "compel" the Government of this Province not to insist on the awarded boundaries; was to "compel" them "to come to terms," and to induce such a condition of the territory that "they must do so;" and the Minister predicted that the Government of this Province would "come to terms quickly enough when they found they must do so." That this House approves of the refusal of the Government of this Province to be coerced into consenting to the proposals contained in the despatch of the Federal Secretary of State to His Honour the Lieutenant-Governor, dated the 27th January last, which were the only terms proposed to this Province since the award.

9. That it would be most unjust for the Federal authorities to entangle this Province in a second litigation, especially after having delayed for more than three years since the award to propose any mode or terms of settlement. But this House concurs with the Government of the Province in recognizing the possible expediency, under all the circumstances, of an immediate reference to the Privy Council of the questions of the award and the boundaries, on the condition (in order to avoid further delay and unnecessary difficulty) that the reference shall be based on the evidence collected and printed for the Arbitrators, with any additional documentary evidence, if such there is; and on the further condition that, pending the reference, the territory, its population and lands, shall, by the legislative consent of all parties, be subject in all respects to the laws of this Province, including the jurisdiction of its Legislature and Government.

10. That as provisional arrangements to this effect have been ineffectually pressed on the Federal Government, it cannot be forgotten, in deciding upon the future policy of the Province, that the forbearance hitherto exercised in hope of an amicable settlement has been taken advantage of by the Federal authorities to destroy our timber, and to complicate to our prejudice our relations with the territory; that the territory belongs to Ontario, and not to either the Dominion or Manitoba; that before Confederation it was claimed by successive Governments of the Province of Canada as belonging to Upper Canada; that after Confederation the same claim was made in official documents and otherwise, by Federal Ministers, and was by them, on behalf of the Dominion, affirmed to be a clear title, such that "no impartial investigator of the evidence in the case could doubt it;" that inasmuch as the territory forms part of Ontario, it follows that the only legal government which is possible in the territory is government by Ontario; that the only laws which are in force are the laws of Ontario; that the only grants of land which

can convey a legal title are grants by this Province; that valid licenses for mining or for cutting timber can be issued by this Province alone; and that all the acts of the Federal Government in pretending to deal with lands, timber or mines, and all legislative and executive acts of the Province of Manitoba with reference to the territory, are illegal and of no force or validity. In view of these considerations, it has, in the opinion of this House, become the duty of this Province to assume without further delay the full government and ownership of the territory, without reference to the claims of the Federal Government.

11. That this House is unwilling to believe that the Federal authorities are so determined to make the territory a prey to unsettled government and disputed jurisdiction, and so determined to "compel" this Province to abandon its just and awarded rights, that the Federal Government will offer forcible resistance to the laws and the constituted authorities of Ontario; and this House is of opinion that, while collision with the Federal authorities is to be avoided, the stipendiary magistrates and the other officers of this Province should be instructed to see that as far as possible our laws are enforced, peace and order preserved, and justice duly administered as in other parts of this Province, and that trespassers are not allowed to destroy the property of the Province; and if the authorities of this Province should, in the discharge of their constitutional functions, be resisted by Federal authority, the responsibility is to be left with the Federal authorities, and the remedy to the people whom the Federal and Provincial authorities respectively represent.

Mr. Meredith moved, seconded by the Hon. Mr. Morris, by way of

PROPOSED AMENDMENT TO THE FOREGOING RESOLUTIONS,

That all the words in the first Resolution after the word "That" be struck out, and the following substituted therefor: "by the provisions of the British North America Act, 1867, the limits of the Province of Ontario are declared to be those which formerly constituted the limits of Upper Canada.

"That neither the Government nor the Parliament of Canada has, or has ever claimed to have, any authority, without the express consent of the Province, to define its boundaries, or to in anywise interfere with its territorial rights or limits.

"That differences having arisen between the Governments of the Dominion and of the Province with reference to the true boundaries of the Province, the Government of Ontario entered into negotiations with the Government of the Dominion for the determination of the true situation of the northerly and westerly boundaries of the Province, as defined by the British North America Act, and in the first Session of the year 1874, obtained from this House its sanction for the submission of the questions in dispute either to arbitration or to the Judical Committee of Her Majesty's Privy Council, but the Government of the Dominion (then led by the Honourable Alexander Mackenzie) failed to ask or to obtain the like authority from the Parliament of Canada.

"That in the year 1874 an agreement was entered into between the two Governments for the administration and disposal of the lands within the limits of the territory in dispute, and by that agreement conventional boundary lines were adopted, and it was agreed that the Government of Ontario should, 'until the final adjustment of the true boundaries of the Province,' have the charge, management, and disposal of the lands east and south of such conventional boundaries, and the Government of Canada of the lands west and north of them, in each case subject to account when the true boundaries should be definitely adjusted; and the Dominion authorities have, ever since the agreement was made, and under the authority of it, been and are now in possession of the land west and north of the said conventional boundary lines; and the Province of Ontario has been and is in undisturbed possession of the lands east and south of the said conventional boundary lines, which last-mentioned lands comprise two-thirds of the whole territory in dispute.

"That subsequently, and in the same year (1874), an agreement was entered into between the two Governments that, subject to the approval of the Parliament of Canada and of the Legislature of Ontario, the matters in dispute between them should be referred to arbitration, and by the terms of that agreement it was provided that concurrent

action should be taken by the two Governments in obtaining such legislation as might be necessary for giving 'binding effect' to the conclusions which should be arrived at.

"That in pursuance of the agreement last mentioned, the Legislature of this Province in the year 1874, passed an Act for the purpose of giving effect to the award of the Arbitrators when made; but the Government of the Dominion, then led by the Honourable Alexander Mackenzie, though applied to for that purpose, refused to ask the Parliament of Canada to pass a similar Act, and claimed to reserve, and insisted upon reserving, to the Parliament of Canada, the right of approving or disapproving of the award after it should be made; and the Government of Ontario assented to and acquiesced in the position taken by the Dominion Government, and to the reservation of that right to the Parliament of Canada.

"That, notwithstanding that the agreement of reference was made in the year 1874, and although negotiations were subsequently entered into between the two Governments for the adoption of a compromise line (the particulars of which negotiations this House has been unable to obtain), the case was not presented to the Arbitrators for consideration, and was not adjudicated upon by them until the month of August, 1878.

"That the Parliament of Canada, in the exercise of the right so expressly reserved to it, with the full consent of the Government of Ontario, has withheld its assent to the adoption of the boundaries as defined in the said award.

"That while this House regrets that the Parliament of Canada has not seen fit to give such assent, it cannot fail to recognize the right of that body, in the exercise of its powers, to adopt that course which, in the judgment of its members, sound policy and the rights of the people of the whole Dominion dictate, and for the adoption of which they are responsible to the people of Canada.

"That the award made by the Arbitrators being, as it now is, by reason of the premises, wholly nugatory and inoperative, the whole question remains undetermined, and the parties to the negotiations are remitted to their original rights and position, and it is now, in the judgment of this House, in view of the grave difficulties and inconveniences arising from delay, of paramount importance that an early settlement of the questions in dispute should be come to.

"That, in the opinion of this House, it is the duty of the Government of Ontario, under the authority of the resolution above referred to (the reference to arbitration having proved abortive), to take steps for the immediate submission of the matters in dispute between the two Governments, for decision by the alternative mode authorized by the said resolution—a reference to the Judicial Committee of Her Majesty's Privy Council, and a mode which was proposed by the Government of Canada, led by Sir John Macdonald, as early as the year 1872, and which that Government is still willing (as shown by the correspondence submitted during the present session) to agree to.

"That in view of the statement of Sir Francis Hincks, one of the Arbitrators by whom the award was made, that every doubtful point arising upon the reference was, by the Arbitrators, decided against the claims of Ontario, and the statement of the Attorney-General that the territory awarded to this Province comprises less than one-thirteenth of the territory claimed by her, it is impossible that the result of a reference to the Judicial Committee of Her Majesty's Privy Council will be less favourable than that of the reference to arbitration.

"That to postpone action with a view to the final settlement of the matters in dispute, in the hope that the electors of the Dominion will reverse the decision of the Parliament of Canada, will be to incur the risk that the questions as to the territory in dispute 'may be overshadowed by other issues, which in Dominion politics divide parties;' and in the very probable event of the Dominion Government being sustained, it will then be necessary to resort to the means now proposed for the settlement of the matters in dispute, and the valuable time intervening will have been thrown away.

"That the legislation of the Dominion Parliament providing for the extension of the boundaries of Manitoba could not, did not, and did not profess to take from this Province any part of the territory assigned to it by the British North America Act; but, on the contrary, expressly provided that the easterly boundary of Manitoba should extend only so far east as to meet the westerly boundary of the Province of Ontario.

"That the correspondence with the Dominion authorities satisfies this House that the Government of the Dominion, notwithstanding that, by the terms of the agreement for the adoption of the conventional boundaries before referred to, it is entitled to administer the lands in the territory west and north of the conventional boundaries until the final adjustment of the true boundaries of the Province, is prepared to come to reasonable arrangements for the government and administration of affairs in the territory in dispute; and, in the opinion of this House, it is the duty of the Government of Ontario to enter into immediate negotiations with the Government of the Dominion with a view to effecting suitable arrangements of that character, including an equitable arrangement for the administration and disposal of the lands in the territory in dispute.

"That this House deeply regrets that while a speedy settlement of the matters in dispute, by a reference to the Privy Council, is being pressed on their attention by the Government of Canada, and a willingness expressed by it to arrange reasonable terms for the government of the territory in the meantime, the advisers of the Crown in Ontario manifest a disposition to retard that reference, reject amicable proposals for the government of the territory, and invite the House to take the law into its own hands and resort to rash measures, calculated to endanger the peace of the Dominion and imperil the best interests of the Province.

"That this House further regrets and deprecates the violent, improper and reckless attitude assumed by the advisers of the Crown in Ontario with regard to the important questions to which these resolutions relate, and affirms that the suggested action is not dictated by a desire to promote the best interests of the Province, but by an intention to create political capital at the expense of arousing ill-feeling and animosity between the Province of Ontario and the rest of the Dominion.

"That while this House is prepared to firmly maintain, by all constitutional means, the rights of this Province, it is compelled to protest, and does earnestly protest, against the action of the advisers of the Crown for Ontario in the premises—action which is inimical to the best interests of the Province, hostile to the Crown, and which will not be sanctioned or tolerated by the loyal people of the Province of Ontario."

The Amendment having been put, was lost on the following

DIVISION :—

YEAS—Messieurs Baker, Baskerville, Bell, Boulter, Brereton, Broder, Creighton, French, Jelly, Kerr, Lauder, Lees, Macmaster, Madill, Meredith, Metcalfe, Monk, Morgan, Morris, Near, Parkhill, Richardson, Tooley, White, Wigle—25.

NAYS—Messieurs Awrey, Badgerow, Ballantyne, Baxter, Bishop, Blezard, Bonfield, Caldwell, Cascaden, Chisholm, Crooks, Deroche, Dryden, Ferris, Field, Fraser, Freeman, Gibson (Hamilton), Gibson (Huron), Graham, Harcourt, Hardy, Hawley, Hay, Hunter, Laidlaw, Livingstone, Lyon, McCraney, McKim, McMahon, Mack, Mowat, Murray, Nairn, Neelon, Pardee, Patterson, Robinson (Cardwell), Robinson (Kent), Robertson (Halton), Ross, Sinclair, Snider, Striker, Waters, Watterworth, Wells, Widdifield, Wood—50.

The first Resolution having been then again put, was carried.

The remaining Resolutions having then been severally put, were carried, each on a division.

RETURN (30*f*) TO AN ADDRESS OF THE HOUSE OF COMMONS, DATED 1ST MARCH, 1882,

For copies of all Timber Licenses and Mining Licenses issued for cutting timber or mining within the disputed territory west of the meridian of the east end of Hunter's Island; also copies of all leases or grants of mill sites or other water privileges; also statement of the number of acres granted in each year, in the same territories, to date.

By command.

J. A. MOUSSEAU,
Secretary of State.

Department of the Secretary of State,
14th March, 1882.

[In accordance with the recommendation of the Joint Committee on Printing, only the Schedule to the above Return is printed.]

SCHEDULE TO THE FOREGOING RETURN, SHEWING NUMBER OF ACRES GRANTED UNDER LEASE, WITH THE YEAR IN WHICH GRANTED.

1875	Fuller & Co	38,400	Acres.
1876	Stephen H. Fowler	64,000	"
1878	W. J. Macaulay	48,000	"
1880	W. J. Macaulay	16,000	"

SALE.

1881	Keewatin Lumbering and Manufacturing Company	296	"

LICENSE OF OCCUPATION.

1881	Keewatin Lumbering and Manufacturing Company	30	"

[The above Return is given in the form in which it was laid before the House of Commons.—G. E. L.]

RESOLUTION MOVED BY MR. J. B. PLUMB IN THE HOUSE OF COMMONS OF CANADA, 31ST MARCH, 1882, AND ADOPTED 4TH APRIL, 1882.*

That, in the opinion of this House, it is expedient that the western and northern boundaries of the Province of Ontario should be finally settled by a reference to, and an authoritative decision by either the Supreme Court of Canada or the Judicial Committee of the Privy Council in Great Britain, or by the Supreme Court in the first place, subject to a final submission to the Judicial Committee, as the Province of Ontario may choose; that such decision should be obtained either on appeal in a friendly action brought for the purpose, or by reference to the said courts, or either or both of them, by Her Majesty, under the powers conferred upon her by the Imperial and Canadian Parliaments, as the Government of Ontario may prefer; and that the said reference should be based on the evidence collected and printed, with any additional documentary evidence, if such there is, and that pending the reference the administration of the lands shall be entrusted to a Joint Commission appointed by the Governments of Canada and Ontario.

The resolution was carried on the following division:—

YEAS—Messieurs Abbott, Allison, Amyot, Arkell, Baker, Beaty, Beauchesne, Bechard, Benoit, Bergeron, Bergin, Bill, Bolduc, Boultbee, Bourassa, Bourbeau, Bowell, Brecken, Bunster, Bunting, Cameron (Victoria), Carling, Caron, Cimon (Charlevoix), Cimon (Chicoutimi), Colby, Costigan, Coughlin, Coupal, Coursol, Cuthbert, Dawson, Desaulniers,

* Journals Ho. of Com., 1882.

Desjardins, Domville, Drew, Dugas, Dumont, Elliott, Farrow, Ferguson, Fiset, Fitzsimmons, Fortin, Fulton, Gault, Gigault, Girouard (Jacques Cartier), Girouard (Kent), Grandbois, Guillet, Haggart, Hay, Hesson, Homer, Hooper, Hurteau, Ives, Kaulbach, Kilvert, Kirkpatrick, Krantz, Landry, Sir Hector Langevin, Lantier, Longley, Macdonald (King's), McDonald (Cape Breton), McMillan, McCallum, McCuaig, McDougall, McGreevey, McLennan, McQuade, McRory, Malouin, Manson, Massue, Merner, Methot-Montplaiser, Mousseau, O'Connor, Ogden, Olivier, Orton, Ouimet, Pinsonneault, Plumb, Pope (Compton), Poupore, Richey, Rinfret, Roleau, Routhier, Royal, Ryan (Montreal), Rykert, Shaw, Sproule, Stephenson, Strange, Tassé, Sir Leonard Tilley, Tyrwhitt, Valin, Vallee, Vanassee, Wade, Wallace (Norfolk), Wallace (York), White (Cardwell), White (Hastings), Williams, Wright—116.

Nays—Messieurs Anglin, Bain, Blake, Borden, Brown, Burpee (St. John), Burpee (Sunbury), Cameron (Huron), Sir Richard Cartwright, Casey, Casgrain, Charlton, Cockburn, Crouter, Fleming, Geoffrion, Gillies, Gilmor, Gunn, Guthrie, Holton, Huntington, Irvine, Killam, King, Laurier, McDonald (Victoria, N. S.), Macdonell (Lanark), McIsaac, Mills, Paterson (Brant), Robertson (Shelburne), Rogers, Ross (Middlesex), Rymal, Skinner, Smith, Snowball, Sutherland, Thompson, Trow, Weldon, Wheler, Wiser—44.

An Act to amend and further to continue in force, for a limited time, the Act Forty-third Victoria, Chapter Thirty-six.*

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. The Act passed in the forty-third year of Her Majesty's reign, chapter thirty-six, and intituled "An Act respecting the Administration of Criminal Justice in the Territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada," is hereby amended by inserting, after the name "Ontario" in the third line of the second section thereof, the words "or in Manitoba," and by inserting in the sixth line of the said section the words "or in an undisputed part of Manitoba," and as so amended shall continue in force until the end of the now next ensuing session of Parliament.

---

* Stats. Can., 45 Vic., cap. 31. Assented to 17th May, 1882. [This is the Act referred to in note *, p. 413, *ante*, and which it was eventually found possible to insert in this place.—G. E. L.]

INDEX.

ACTS OF PARLIAMENT BEARING ON THE QUESTIONS:—

14 Geo. III., cap. 83—Quebec Act of 1774.

43 Geo. III., cap. 138—For extending the Imperial Jurisdiction of the Courts of Justice in the Provinces of Upper and Lower Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America, adjoining to the said Provinces.

1 and 2 Geo. IV., cap. 66—For regulating the Fur Trade and establishing a Criminal and Civil Jurisdiction within certain parts of North America.

3 and 4 William IV., c. 41—For the better Administration of Justice in His Majesty's Privy Council.

22 and 23 Vic., cap. 26—To make further provision for the Imperial regulation of the trade with the Indians, and for the Administration of Justice in the North-Western Territories of America.

British Columbia Act, 1866.

British North America Act, 1867, 30 and 31 Vic., c. 3.

Rupert's Land Act, 1868, 31 and 32 Vic., c. 105.

34 and 35 Vic., c. 28—Respecting the establishment of Provinces in the Dominion of Canada.

32 and 33 Vic., cap. 3 (Dominion)—For the temporary government of Rupert's Land and the North-West Territory when united with Canada.

Manitoba Act, 1870 (Dominion), 32 and 33 Vic., c. 3.

39 Vic., cap. 21 (Dominion)—Respecting the North-West Territories and to create a separate Territory out of part thereof.

42 Vic., cap. 2 (Dominion)—To provide for the payment of an additional grant to the Province of Manitoba.

43 Vic., cap. 36 (Dominion)—Respecting the Administration of Criminal Justice in the Territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada.

44 Vic., cap. 14 (Dominion)—To provide for the extension of the boundaries of the Province of Manitoba.

44 Vic., cap. 15 (Dominion)—To extend for a limited period, 43 Vic., c. 36.

45 Vic., cap. 31—To extend for a limited period, 43 Vic., cap. 36.

ADDRESSES:—

PAGE.

The Canadian Parliament to Her Majesty the Queen on the subject of the License of Trade to the Hudson's Bay Company, 13th August, 1858 68
Amendments to, negatived, 13th August, 1858 69
Correspondence respecting above Addresses of, 16th August, 1858..... 71
Order in Council, as to same, 9th September, 1858 71
The same to Her Majesty on the subject of litigation of the validity of the Hudson's Bay Company's Charter, 29th April, 1859 87
The same to the Governor-General, for copies of Maps furnished the Government by the Hudson's Bay Company, 9th December, 1867.. 128
The same to Her Majesty, for acquisition of the North-West Territory, December, 1867 128
The same to Her Majesty in acceptance of the transfer of the Hudson's Bay Company's Territory, May 29th and 31st, 1869 183
The Legislative Assembly of Ontario to the Lieutenant-Governor, praying for copies of certain papers touching the boundaries, 20th January, 1873 240
The Legislative Assembly of Manitoba to Governor-General, praying the Privy Council of Canada to take steps for the immediate enlargement of the Province, 14th February, 1880 385

ALGOMA:—

Boundaries of, proclaimed, 27th August, 1859..... 125
Petition for the establishment of a Division Court at Rat Portage 401
Order in Council (Ontario) creating Division Court, 28th May, 1880..... 402

ARBITRATORS:—

Appointment of 249–266
Statement of the case of Ontario 267
Statement of the case of the Dominion..... 277
Supplement to the statement of Dominion case 298
Report of Proceedings before Arbitrators 304
Argument of the Attorney-General before 306
Argument of Mr. Hodgins, Q.C. 327
Argument of Mr. MacMahon, Q.C. 338
Argument of Mr. Monk 363
The Attorney-General of Ontario in reply 369

ARBITRATION:—

Resolution of the Legislative Assembly of Ontario respecting reference to, March 23rd, 1874..... 242
Agreement for submission to, and Order in Council, Nov. 10th and 12th, 1874.. 247
Orders in Council in final approval of Arbitrators and Arbitration, July 31st, 1878 266
Information and documents furnished by the Hudson's Bay Company for other investigations for purposes of 251, 254, 257, 259

ATTORNEY-GENERAL OF ONTARIO:—

PAGE.

His report recommending that all leases, and licenses, and applications therefor, shall be subject to the stipulations contained in the memorandum agreed upon by Messieurs Laird and Pardee, and Order in Council, May 7th, 1878. 263–4

His statement of the case of the Province on the question of the northerly and westerly boundaries as presented to Arbitrators in 1878..... 267

His report on the Ontario Act respecting the administration of justice in the northerly and westerly parts of Ontario, in reply to a report of the Minister of Justice, urging the disallowance of the Act, and Order in Council, March 15th, 1880 388–392

His letter to the Minister of Justice respecting the Administration of Justice in the disputed territory, and enclosing a draft Bill embodying the provisions necessary for the government of the territory in the interim, April 23rd, 1880. 396

His letter to the Minister of Justice again, urging the necessity of legislation adopting and confirming the boundary award, and enclosing a new draft Bill to supply certain omissions in former Bills, February 1st, 1881..... 403

His report on the Boundary Question in November, 1881..... 432

AWARD:—

August 3rd, 1878..... 370

Correspondence respecting legislation to give effect to, December 31st, 1878 .....371, 374, 377

BRITISH COLUMBIA:—

British Columbia Act, August 6th, 1866..... 122

Act establishing Mining Courts, 1872..... 381

BRITISH NORTH AMERICA ACT:—

Extracts from, March 29th, 1867 123

BROWN, HON. GEORGE:—

His report respecting his mission to England on the subject of opening up to settlement the North-West Territories, January 26th, 1865 105

CANADIAN PARLIAMENT:—

Address from, to Her Majesty the Queen, etc., August 13th, 1858 68

Amendments moved to by Mr. Dawson and negatived, August 13th, 1858.... 69

Address from, to Her Majesty, respecting the litigation of the question of the validity of the Hudson's Bay Company's Charter, etc., April 29th, 1859.. 87

Resolutions of, in acceptance of the transfer of the Hudson's Bay Company's Territories, May 28th, 1869 182

Address to the Queen in acceptance, May 31st, 1869 183

Resolution of House of Commons, April 4th, 1882..... 490

CARTIER, SIR GEORGE :—

PAGE.

His appointment by Order in Council, in connection with Mr. McDougall, as Delegates to London *re* Treaty with Hudson's Bay Company, October 1st, 1868 142

Memorandum calling attention to Rupert's Land Act and the British North America Act, and Order in Council, October 1st, 1868 ..... 142, 143

His agreement with the Governor of the Hudson's Bay Company, March 22nd-29th, 1869 177

Report, May 8th, 1869 180

CAUCHON, HON. JOSEPH :—

His report as Commissioner of Crown Lands in 1857 6

CHARTER TO H. B. COMPANY 1

COMMISSIONERS :—

Their appointment by Canada and Ontario, July 28th, September 19th and 21st, 1871 .....207, 208, 209

Instructions to Dominion Commissioner, March 11th, 1872 218

Mr. McDougall's letter concerning his action, March 9th, 1872 216

CRIMINAL JUSTICE :—

Act for the administration of, in the disputed territory, May 7th, 1880 400

Act continuing same, March 21st, 1881 413

Act continuing same, May 17th, 1882 491

CROOKS, HON. A. :—

His report to the Lieutenant-Governor on the appointment of Arbitrators, and naming the Hon. W. B. Richards, November 10th, 1874 246

CROWN LANDS (CANADA), COMMISSIONER OF :—

Memorandum of Hon. J. Cauchon, 1857 6

Memorandum of, regarding the survey of the section of country between Superior and Dog Lakes, with memorandum of cost of bridging, June 14th, 1867.. 125

DAWSON, WILLIAM McD. :—

Evidence of, before Committee of the Legislative Assembly of Canada, 8th June, 1857 40

His amendments moved to proposed Address to Her Majesty respecting the Hudson's Bay Company 69

DENNIS, COL. :—

His report on the question of the boundary between Ontario and the North-West, October 1st, 1871 209

DRAPER, CHIEF JUSTICE:—

PAGE.

Appointment as Special Agent to England, instructions, etc., February 16th, 1857 3–5
Letter to Colonial Secretary, May 6th, 1857 31
His memorandum, May 6th, 1857 32
Paper delivered by him to the House of Commons Committee, May 28th, 1857 37
Extract from his communication to the Provincial Secretary in June, 1857, as to boundaries, July 18th, 1857 47
His final report respecting his mission to England, 1857 51

HINCKS, SIR FRANCIS:—

His lecture on the northerly and westerly boundaries of Ontario, and the award made thereon, delivered in Toronto on 6th May, 1881 414

HUDSON'S BAY COMPANY:—

Correspondence respecting the affairs of, December 4th, 1856 1
Order in Council respecting, January 17th, 1857 2
Governor of the Company to the Colonial Secretary, on the position of the Company in 1857, July 18th, 1857 .....47, 48
Correspondence respecting the proposed renewal of the Company's license, January 20th, 1858..... 60
Address to Her Majesty from Canadian Parliament on approaching termination of the License of Trade of the Company and its territory, August 13th, 1858 68
Minute of Council respecting the territory of the Company, September 9th, 1858 71
Letter from the Deputy-Governor of the Company, October 12th, 1858 72
Deputy-Governor of the Company to Colonial Secretary, on the subject of the above letter, November 10th, 1858..... 74
Governor of the Company to the Colonial Secretary, on the subject of the renewal of license, February 8th, 1859..... 77
Governor of the Company to the Colonial Secretary, declining the proposal of the two years' lease, March 15th, 1859..... 84
Objections of the Company to the proposed trans-continental road and telegraph, April 16th, 1862 90
Governor of the Company to the Colonial Secretary, enclosing correspondence on the subject of the proposed road and telegraph, and setting out the objections of the Company, May 19th, 1862..... 92
Negotiations with Imperial Government, November 11th, 1864 102
Proposed sale of territory to a company of capitalists, correspondence respecting, January 18th, March 6th, 1866 .....114, 117
Secretary of the Company to Mr. McEwen, on the subject of the sale of part of their territory, January 24th, 1866..... 115
Governor of the Company to the Colonial Secretary, enclosing papers on above subjects, February 6th, 1866 115

HUDSON'S BAY COMPANY:—*Continued.*

PAGE.

Governor of the Company to Under-Secretary, respecting the arrangement for transferring their rights to Canada, March 1st, 1866 116
Governor of the Company to Under-Secretary, referring to the contents of a United States pamphlet recently sent him, July 17th, 1866 120
Governor of the Company to Colonial Secretary, reminding him of the Company's rights, and commenting on proceedings in the Canadian Parliament, January 15th, 1868 131
Position of the Company on proposed transfer to Canada, 1868 132
Proposed terms of surrender, 1868 143
The Company's proposed terms of surrender, 1868 146
The Colonial Secretary's proposed terms, 1868 147
Protest against construction of Red River road, 1868 148
Reply to letter of Canadian Delegates to Colonial Secretary, January 16th, 1869 151
Company's proposed terms of transfer of territory, January 13th, 1869 152
Canadian Delegates in review of Company's proposed terms, February 8th, 1869 155
Position of the Company in the matter, 1869 159
Statement of French title to 161
Nature of previous proposals, 1869 163
Counter-proposals of Canadian Delegates, February, 1869 ..... 167, 168
New terms of surrender, March, 1869 170
Resolutions of the Governor and Committee of the Company transmitted to Canadian Delegates, March 12th, 1869 173
Negotiations between Canadian Delegates and Company, 1869 174
Provisional agreement between the Delegates and the Company, March 22nd, 1869 176
Further agreement between Sir G. Cartier and the Governor of the Company, March 29th, 1869 177
Acceptance of terms, and conclusion of negotiations for surrender, April 10th, 1869 ..... 178, 179
Deed of surrender, 1869 185
Canadian proposal for postponement of transfer in consequence of disturbances in the Red River Settlement, December 16th 1869 195
Correspondence as to same, December 28th, 1869 196
Terms of transfer, June 23rd, 1870 201

INDIAN TERRITORIES:—

Memorandum of the Hon. Joseph Cauchon, 1857 6
Act for the Preservation of Peace in, 1821 78

JUSTICE, ADMINISTRATION OF:—

Petition for establishment of a Division Court at Rat Portage, 1880 401
Order in Council creating (Ontario), May 28th, 1880 402

JUSTICE, ADMINISTRATION OF :—*Continued.*

PAGE.

Mr. Lyon's letters respecting the jurisdiction, April 15th, 1880, and Sept. 30th, 1881 395-431
Under-Secretary of State to the Petitioners of Rat Portage, April 1st, 1881 .. 413
Act respecting the administration of, in the territory in dispute between the Government of Ontario and the Dominion, May 7th, 1880 400
Act continuing same (March 21st, 1881.) 413
do. do. (May 17th, 1882.) 491
Correspondence respecting, March 13th, 15th, 17th, 1880 ..... 387, 392
Disallowance of Act, March 22nd, 1880 394

KEEWATIN :—

Act creating the Province of, April 12th, 1876 250

LAIRD, HON. MR. :—

His report on conventional boundaries and system of sale of lands in the disputed territory, and suggesting appointment of Ontario Commissioner to meet him on the subject, June 2nd, 1874 242

LAKE SUPERIOR :—

Protection of frontier lands above Lake Superior 3
Exploration of the country between the Lake and the Red River, under Mr. Gladman, 1857 49
Telegraphic and postal communication from Lake to New Westminister proposed, 1863 97-8-9
Patents or Mining Licenses at the head of, in 1871 213

LEGISLATIVE ASSEMBLY OF ONTARIO :—

Resolution approving of the reference of the question of the western boundary of Ontario to arbitration, or to Privy Council, March 23, 1874 242
Resolutions *re* boundaries, March 3rd, 1880 386-7
Resolutions, March 3rd, 1881 406
Amendments moved to the third paragraph of the Speech, January 26th, 1882. 466-7
Resolutions respecting the boundary question March 9th, 1882 485
Mr. Meredith's amendment lost on division, March 9th, 1882 487
Resolutions carried, March 9th, 1882 489

LIEUTENANT-GOVERNOR :—

Extract from his Speech from the Throne to the Legislative Assembly of Ontario in 1869, *in re* boundary line, November 3rd 185
His communication to the Secretary of State, Canada, urging settlement of boundary line, and the appointment of Commissioners, July 17th, 1871 .. 206
Reply, July 20th 1871 207

LIEUTENANT-GOVERNOR:—*Continued.*

PAGE.

Extract from Speech from the Throne in January, 1873 240
Extract from Speech from the Throne in the first Session of 1874..... 242
Extract from Speech from the Throne in the second Session of 1874 248
Extract from Speech from the Throne in 1875-6..... 250
Extract from Speech from the Throne in 1877..... 252
Extract from Speech from the Throne in 1878..... 259
Extract from Speech from the Throne in 1879..... 372
Extract from Speech from the Throne in 1880..... 378
Extract from Speech from the Throne in 1881..... 403
Despatch of, to the Secretary of State, respecting the question of the disputed territory and its conditions, December 31st, 1881 461
Extract from Speech from the Throne in 1882 466
Despatch of, to Secretary of State, in answer to terms of settlement proposed by the Dominion Government, February 18th, 1882..... 472

McDOUGALL, HON. WILLIAM:—
His report on the subject of the negotiations with the Imperial Government for the transfer of Rupert's Land and the North-West Territory to Canada, December 28th, 1867 130
His appointment with Sir George Cartier as delegate to London in 1868, *re* the Treaty with the Hudson's Bay Company, October 1st, 1868 142
Memorandum accepting Commission, October 1st, 1868 142
Report, May 8th, 1869 180
His appointment as Ontario Commissioner to determine the boundary line between Ontario and the North-West, and correspondence, September 19th and 20th, 1871 ..... 208, 209
His action, March 9th, 1872 216
Preliminary memorandum of, on the subject of the Western Boundary, March 1872..... 221

MACDONALD, HON. JOHN SANDFIELD:—
Memorandum of, on the necessity of settling the true boundary separating Ontario from the North-West Territory, and the appointment of a Commissioner for the purpose, July 14th, 1871..... 205

MANITOBA, PROVINCE OF:—
Act to provide for the government of the Province of Manitoba May 12th, 1870 198
Proposed Imperial legislation for confirmation of Act, and authorizing the establishment of the limits of the Provinces, December 29th, 1870 203
Act for the definition of the boundaries of February 28th, 1877 252
Address of the Legislature praying for enlargement of boundary, February 14th, 1880 385
An Act of the Legislature to provide for the extension of the boundary; correspondence, March 4th, 1881..... 407, 408

MANITOBA, PROVINCE OF :—*Continued.*

PAGE.

Protest of Ontario against proposed mode of extension of limits of, and correspondence, March 15th, 1881 ..... 409, 410
Proceedings in the Parliament of Canada on the third reading of the Bill, March 18th, 1881 410
An Act (Canada) to provide for the extension of the boundaries of, March 21st, 1881 412

MINING LICENSES :—

At the head of Lake Superior, in 1871 213
Correspondence, 1871 214
Report of Minister of Justice, March 11th, 1872 218

MOUSSEAU, HON. J. A. :—

His despatch on the N. and W. Boundaries, January 27th, 1882 468–72

NEGOTIATIONS :—

Between Imperial Government and the H. B. Company, 1864 ..... 102, 107-9
Delegation to England in 1865, Order in Council recommending, March 24th .. 111
Report, July 12th, 1865 112
To England in 1868 (telegrams), September 141
Appointment, and Order in Council on, October 1st, 1868, March 1869 .. 142, 175, 177
Their Memorandum, and Order in Council on, October 1st, 1868 142
Correspondence, December, 1868, January 1869, March 1869 ..... 149, 155, 173
Reviewing Company's proposed terms of transfer, 1869 155
Counter proposals of (correspondence), February 22nd, 1869 167
Agreements, March 22nd, 1869 176
Respecting proposed terms of surrender, 1869 177
Conclusions of the negotiations for surrender, 1869 179
Report of Delegates on, May 8th, 1869 180
Resolution of Canadian Parliament, May 28th, 1869 182
Address of Canadian Parliament in acceptance, May 31st, 1869 183

NORTH-WEST TERRITORIES :—

Hon. Jos. Cauchon's remarks on—1857 6
Opening up of, correspondence, August 16, 1865 114
Transfer to Canada, in 1868 130
Nature of previous proposals, 1869 163
New terms of surrender, March 9, 1869 170
Acceptance of terms of surrender, April 10, 1869 178–9
Act for temporary government of—June 22, 1869 185
Imperial Order in Council for the admission of into the Dominion, June 23, 1870 200
Col. Dennis' report on the boundary between Ontario and—October 1, 1870 .. 209
Act respecting and creating a separate territory out of part thereof, April 12, 1876 250

ORDERS IN COUNCIL (*Imperial*):—

PAGE.

1. Uniting Rupert's Land and North-West to the Dominion, June 23rd, 1870. 200
2. Annexing all British Territories in North America not already included in the Dominion (excepting Newfoundland) to the Dominion, July 31st, 1880. 402

CANADA:—

1. Respecting claims of Hudson's Bay Company and Boundaries of Canada, January 17th, 1857 2
2. Respecting appointment of special agent to England, and his instructions, February 16th, 1857 3
3. Respecting Territory of Hudson's Bay Company, September 4, 1858 71
4. On the subject of the proposed Trans-Continental Road and Telegraph, April 24th, 1862 91
5. That $50,000 be placed in estimates towards securing Telegraphic and Postal communication westward, February 9th, 1863 97
6. Respecting proposal of Atlantic and Pacific Transit and Telegraph Company, February 18th, 1864 100
7. On the subject of pending negotiations for the cession to the Crown of the rights of Hudson's Bay Company, November 11th, 1864 102
8. On the appointment of the Canadian Ministerial Delegation to England in 1865, March 24th, 1865 111
9. On the opening up of the North-West Territories to settlement, March 27th, 1865 112
10. Protesting against the contemplated sale of a portion of the Hudson's Bay Company's Territory, June 22nd, 1866 118
11. Respecting the construction of a road from Thunder Bay to Dog Lake, June 18th, 1867 126
12. Respecting the transfer of Rupert's Land and the North-West Territories to Canada, December 28th, 1867 129
13. For the acquisition by Canada of Rupert's Land, and appointing Delegates to England, October 1st, 1868 142
14. That the Delegates be authorized to arrange for the admission of the North-West Territories into the union, with or without Rupert's Land, October 1st, 1868 143
15. On report of Canadian Delegates, May 14th, 1869 181
16. On subject of disturbance in Red River Settlement, December 16th, 1869. 193
17. On application of Ontario Government *re* appointment of Commissioners, July 28th, 1871 207
18. *re* Patents and Mining Licenses about the head of Lake Superior, November 28th, 1871 213
19. That copy of draft instructions be sent to Ontario Government, March 12th, 1872 219
20. On despatch of Lieutenant-Governor of Ontario, *re* location of Boundary line, April 9th, 1872 228

CANADA :—*Continued.*

PAGE.

21. *re* Land and Mining Licenses, May 16th, 1862 232
22. *re* Subject of Boundaries ; establishment of Criminal and Civil Jurisdiction, etc., November 7th, 1872 238
23. Approving report of Minister of Interior *re* Conventional Boundaries, etc., June 3rd, 1874 243
24. Approving of provisional arrangements between Messrs Laird and Pardee, July 8th, 1874..... 245
25. Concurring in proposition of Ontario Government to determine the boundaries by means of reference, November 12th, 1874 247
26. Approving of Memorandum of Minister of Interior respecting boundaries and ratification of leases, April 29th, 1878 262
27. Approving of the appointment of Arbitrators and Referees, July 31st, 1878 266
28. On the subject of disallowing Ontario Act respecting the Administration of Justice in the Northerly and Westerly parts of Ontario, February 12th, 1880 384
29. Disallowing the Act, March 22nd, 1880 394

ONTARIO :—

1. Mr. McDougall's appointment, September 19th, 1871 208
2. *re* The granting of Patents pending settlement of Boundary Line, January 4th, 1872.. 214
3. *re* Claim to Boundary Line, March 25th, 1872 226
4. On the subject of the Boundary Line, April 19th, 1872 229
5. Appointment of Hon. R. W. Scott, May 31st, 1872..... 233
6. The expenditures of moneys at Thunder Bay, June 26th, 1872 236
7. Approving of provisional agreement, July 9th, 1874..... 245
8. Approving of the report of Hon. A. Crooks, November 25th, 1874..... 249
9. Respecting Leases and Licenses under Memorandum of Messrs. Laird and Pardee, May 9th, 1878 264
10. Respecting the appointment of Arbitrators, July 31st, 1878..... 266
11. Approving of Report of Attorney-General with respect to a despatch of the Under-Secretary of State, March 15th, 1880..... 392
12. Establishing Division Courts in Thunder Bay, May 28th, 1880..... 402

PROVISIONAL BOUNDARY :—

Memorandum of Agreement for, in respect of patents for land, March, 1872.. 224
Extension of to licenses, in 1778 262
Correspondence respecting, May 1st, 1878 262–4

PUBLIC WORKS :—

An appropriation of $50,000 recommended by Canadian Government for Telegraph and Postal Service towards British Columbia, February 9th, 1863.. 97
On Height of Land before Confederation, 1867 126

RED RIVER SETTLEMENT:—

PAGE.

Instructions for Exploration of the country between the river and Lake Superior, under Mr. Gladman, in 1857 49
Hudson's Bay Company's Protest against building the Red River road; and correspondence, December, 1868 148
Correspondence regarding Disturbances in, November, 1869 191

REPORTS:—

1. Of Chief Justice Draper (memorandum), May 6th, 1857 32
2. Of Mr. McD. Dawson (before the Legislative Assembly of Canada, June 8th, 1857) 40
3. Of Chief Justice Draper (final) in 1857 51
4. Of Postmaster-General Foley, October 17th, 1862 94
5. Of Hon. George Brown, January 26th, 1865 105
6. Of the Canadian Delegates to England in 1865 112
7. Of the Minister of Public Works (Dominion), December 28th, 1867 130
8. Of the Canadian Delegates to England in 1869 180
9. Of the Minister of Justice, December 29th, 1870 203
10. Of Col. Dennis, October 1st, 1871 209
11. Of the Minister of Justice, May 1, 1872 231
12. Of Secretary of State, November 25th, 1872 239
13. Of the Minister of Interior, June 2, 1874 242
14. Of Hon. A. Crooks, November 10th, 1874 246
15. Of Minister of Interior (memorandum), April 24th, 1878 262
16. Of the Attorney-General (Ontario), May 7th, 1878 263
17. Of the Minister of Justice, January 20th, 1880 378
18. Of the Attorney-General (Ontario), March 15th, 1880 388
19. Of the Minister of Justice, March 17th, 1880 392
20. Of the Attorney-General (Ontario), November 1st, 1881 432

RUPERT'S LAND:—

Order in Council respecting transfer, December 28th, 1867 129
Transfer to Canada, correspondence in 1868 130–138
The Rupert's Land Act, 1868 139
Proposed terms of surrender, correspondence in 1868 ..... 14[illegible]
Act for the temporary government of, 1869 ..... 18[illegible]
Imperial Order in Council for the admission of into the Dominion, June, 1870 200

THUNDER BAY:—

Expenditure of moneys at; correspondence, April and June, 1872 231–235

TREATIES:—

St. Germain-en-Laye, in 1632.
Ryswick, " 1697.
Utrecht, " 1713.
Paris, " 1763.

AUG 2 3 1967